

SECTION 5.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 22, 1993, by the following vote: Yeas 29, Nays 0; May 27, 1993, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 1993, House granted request of the Senate; May 30, 1993, Senate adopted Conference Committee Report by the following vote: Yeas 30, Nays 1; passed the House, with amendments, on May 25, 1993, by a non-record vote; May 28, 1993, House granted request of the Senate for appointment of Conference Committee; May 30, 1993, House adopted Conference Committee Report by the following vote: Yeas 78, Nays 59, two present not voting.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment, except Sections 4.07 and 4.08, effective Sept. 1, 1993, and the remainder of Article 4, effective Oct. 1, 1993.

CHAPTER 900

S.B. No. 1067

AN ACT

relating to the sentencing policy of the state and to offenses and punishments under the Penal Code, to offenses and punishments involving certain prohibited or dangerous substances, to the effect of certain convictions and acquittals, and to the civil consequences of certain offenses involving intoxication; providing conforming amendments.

Be it enacted by the Legislature of the State of Texas:

ARTICLE 1

SECTION 1.01. The Penal Code is amended to read as follows:

TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.01. **SHORT TITLE.** This code shall be known and may be cited as the Penal Code.

Sec. 1.02. **OBJECTIVES OF CODE.** The general purposes of this code are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate. To this end, the provisions of this code are intended, and shall be construed, to achieve the following objectives:

- (1) to insure the public safety through:
 - (A) the deterrent influence of the penalties hereinafter provided;
 - (B) the rehabilitation of those convicted of violations of this code; and
 - (C) such punishment as may be necessary to prevent likely recurrence of criminal behavior;
- (2) by definition and grading of offenses to give fair warning of what is prohibited and of the consequences of violation;
- (3) to prescribe penalties that are proportionate to the seriousness of offenses and that permit recognition of differences in rehabilitation possibilities among individual offenders;
- (4) to safeguard conduct that is without guilt from condemnation as criminal;

(5) to guide and limit the exercise of official discretion in law enforcement to prevent arbitrary or oppressive treatment of persons *suspected*, accused, or convicted of offenses; and

(6) to define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

Sec. 1.03. EFFECT OF CODE. (a) Conduct does not constitute an offense unless it is defined as an offense by statute, municipal ordinance, order of a county commissioners court, or rule authorized by and lawfully adopted under a statute.

(b) The provisions of Titles 1, 2, and 3 [~~of this code~~] apply to offenses defined by other laws, unless the statute defining the offense provides otherwise; however, the punishment affixed to an offense defined outside this code shall be applicable unless the punishment is classified in accordance with this code.

(c) This code does not bar, suspend, or otherwise affect a right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered or enforced in a civil suit for conduct this code defines as an offense, and the civil injury is not merged in the offense.

Sec. 1.04. TERRITORIAL JURISDICTION. (a) This state has jurisdiction over an offense that a person commits by his own conduct or the conduct of another for which he is criminally responsible if:

(1) either the conduct or a result that is an element of the offense occurs inside this state;

(2) the conduct outside this state constitutes an attempt to commit an offense inside this state;

(3) the conduct outside this state constitutes a conspiracy to commit an offense inside this state, and an act in furtherance of the conspiracy occurs inside this state; or

(4) the conduct inside this state constitutes an attempt, solicitation, or conspiracy to commit, or establishes criminal responsibility for the commission of, an offense in another jurisdiction that is also an offense under the laws of this state.

(b) If the offense is criminal homicide, a "result" is either the physical impact causing death or the death itself. If the body of a criminal homicide victim is found in this state, it is presumed that the death occurred in this state. If death alone is the basis for jurisdiction, it is a defense to the exercise of jurisdiction by this state that the conduct that constitutes the offense is not made criminal in the jurisdiction where the conduct occurred.

(c) An offense based on an omission to perform a duty imposed on an actor by a statute of this state is committed inside this state regardless of the location of the actor at the time of the offense.

(d) This state includes the land and water [~~and the air space above the land and water~~] over which this state has power to define offenses.

Sec. 1.05. CONSTRUCTION OF CODE. (a) The rule that a penal statute is to be strictly construed does not apply to this code. The provisions of this code shall be construed according to the fair import of their terms, to promote justice and effect the objectives of the code.

(b) Unless a different construction is required by the context, Sections 311.011, 311.012, 311.014, 311.015, and 311.021 through 311.032 of [~~the Code Construction Act~~] Chapter 311, Government Code (*Code Construction Act*), apply to the construction of this code.

(c) *In this code:*

(1) *a reference to a title, chapter, or section without further identification is a reference to a title, chapter, or section of this code; and*

(2) *a reference to a subchapter, subsection, subdivision, paragraph, or other numbered or lettered unit without further identification is a reference to a unit of the next-larger unit of this code in which the reference appears.*

Sec. 1.06. COMPUTATION OF AGE. A person attains a specified age on the day of the anniversary of his birthdate.

Sec. 1.07. DEFINITIONS. (a) In this code:

(1) "Act" means a bodily movement, whether voluntary or involuntary, and includes speech.

(2) "Actor" [~~"Suspect"~~] means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "*suspect*" [~~"actor"~~] is used in this code, it means "*actor*." [~~"suspect."~~]

(3) "Agency" includes authority, board, bureau, commission, committee, council, department, district, division, and office.

(4) "*Alcoholic beverage*" has the meaning assigned by Section 1.04, *Alcoholic Beverage Code*.

(5) [(4)] "Another" means a person other than the actor.

(6) [(5)] "Association" means a government or governmental subdivision or agency, trust, partnership, or two or more persons having a joint or common economic interest.

(7) [(6)] "Benefit" means anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(8) [(7)] "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(9) "*Coercion*" means a threat, however communicated:

(A) to commit an offense;

(B) to inflict bodily injury in the future on the person threatened or another;

(C) to accuse a person of any offense;

(D) to expose a person to hatred, contempt, or ridicule;

(E) to harm the credit or business repute of any person; or

(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(10) [(8)] "Conduct" means an act or omission and its accompanying mental state.

(11) [(9)] "Consent" means assent in fact, whether express or apparent.

(12) "*Controlled substance*" has the meaning assigned by Section 481.002, *Health and Safety Code*.

(13) [(9.1)] "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

(14) "*Correctional facility*" means a place designated by law for the confinement of a person arrested for, charged with, or convicted of a criminal offense. The term includes:

(A) a municipal or county jail;

(B) a confinement facility operated by the Texas Department of Criminal Justice;

(C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and

(D) a community corrections facility operated by a community supervision and corrections department.

(15) [(10)] "Criminal negligence" is defined in Section 6.03 [~~of this code~~] (Culpable Mental States).

(16) "*Dangerous drug*" has the meaning assigned by Section 483.001, *Health and Safety Code*.

(17) [(11)] "Deadly weapon" means:

(A) a firearm or anything manifestly designed, made, or adapted for the purpose of inflicting death or serious bodily injury; or

(B) anything that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(18) "*Drug*" has the meaning assigned by Section 481.002, *Health and Safety Code*.

(19) [(12)] "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by force, threat, or fraud;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable decisions; or

(D) given solely to detect the commission of an offense.

(20) *"Electric generating plant" means a facility that generates electric energy for distribution to the public.*

(21) *"Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.*

(22) [(13)] "Element of offense" means:

(A) the forbidden conduct;

(B) the required culpability;

(C) any required result; and

(D) the negation of any exception to the offense.

(23) [(14)] "Felony" means an offense so designated by law or punishable by death or confinement in a penitentiary.

(24) [(15)] "Government" means:

(A) the state;

(B) a county, municipality, or political subdivision of the state; or

(C) any branch or agency of the state, a county, municipality, or political subdivision.

(25) [(16)] "Harm" means anything reasonably regarded as loss, disadvantage, or injury, including harm to another person in whose welfare the person affected is interested.

(26) [(17)] "Individual" means a human being who has been born and is alive.

(27) *"Institutional division" means the institutional division of the Texas Department of Criminal Justice.*

(28) [(18)] "Intentional" is defined in Section 6.03 [of this code] (Culpable Mental States).

(29) [(19)] "Knowing" is defined in Section 6.03 [of this code] (Culpable Mental States).

(30) [(20)] "Law" means the constitution or a statute of this state or of the United States, a written opinion of a court of record, a municipal ordinance, an order of a county commissioners court, or a rule authorized by and lawfully adopted under a statute.

(31) [(21)] "Misdemeanor" means an offense so designated by law or punishable by fine, by confinement in jail, or by both fine and confinement in jail.

(32) [(22)] "Oath" includes affirmation.

(33) *"Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant.*

(34) [(23)] "Omission" means failure to act.

(35) [(24)] "Owner" means a person who:

(A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor; or

(B) is a holder in due course of a negotiable instrument.

(36) [(25)] "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 51.212 or 51.214, Education Code, or other law.

(37) [(26)] "Penal institution" means a place designated by law for confinement of persons arrested for, charged with, or convicted of an offense.

(38) [(27)] "Person" means an individual, corporation, or association.

(39) [(28)] "Possession" means actual care, custody, control, or management.

(40) [(29)] "Public place" means any place to which the public or a substantial group of the public has access and includes, but is not limited to, streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(41) [(30)] "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer, employee, or agent of government;

(B) a juror or grand juror; or

(C) an arbitrator, referee, or other person who is authorized by law or private written agreement to hear or determine a cause or controversy; or

(D) an attorney at law or notary public when participating in the performance of a governmental function; or

(E) a candidate for nomination or election to public office; or

(F) a person who is performing a governmental function under a claim of right although he is not legally qualified to do so.

(42) [(31)] "Reasonable belief" means a belief that would be held by an ordinary and prudent man in the same circumstances as the actor.

(43) [(32)] "Reckless" is defined in Section 6.03 [of this code] (Culpable Mental States).

(44) [(33)] "Rule" includes regulation.

(45) "Secure correctional facility" means:

(A) a municipal or county jail; or

(B) a confinement facility operated by or under a contract with any division of the Texas Department of Criminal Justice.

(46) [(34)] "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

(47) [(35)] "Swear" includes affirm.

(48) [(36)] "Unlawful" means criminal or tortious or both and includes what would be criminal or tortious but for a defense not amounting to justification or privilege.

[(37) "Electric generating plant" means a facility that generates electric energy for distribution to the public.

[(38) "Electric utility substation" means a facility used to switch or change voltage in connection with the transmission of electric energy for distribution to the public.

[(40) "Participant in a court proceeding" means a judge, a prosecuting attorney or an assistant prosecuting attorney who represents the state, a grand juror, a party in a court proceeding, an attorney representing a party, a witness, or a juror.]

(b) The definition of a term in this code applies to each grammatical variation of the term.

Sec. 1.08. PREEMPTION. No governmental subdivision or agency may enact or enforce a law that makes any conduct covered by this code an offense subject to a criminal penalty. This section shall apply only as long as the law governing the conduct proscribed by this code is legally enforceable.

CHAPTER 2. BURDEN OF PROOF

Sec. 2.01. PROOF BEYOND A REASONABLE DOUBT. All persons are presumed to be innocent and no person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. The fact that he has been arrested, confined, or indicted for, or otherwise charged with, the offense gives rise to no inference of guilt at his trial.

Sec. 2.02. EXCEPTION. (a) An exception to an offense in this code is so labeled by the phrase: "It is an exception to the application of . . ."

(b) The prosecuting attorney must negate the existence of an exception in the accusation charging commission of the offense and prove beyond a reasonable doubt that the defendant or defendant's conduct does not fall within the exception.

(c) This section does not affect exceptions applicable to offenses enacted prior to the effective date of this code.

Sec. 2.03. DEFENSE. (a) A defense to prosecution for an offense in this code is so labeled by the phrase: "It is a defense to prosecution . . ."

(b) The prosecuting attorney is not required to negate the existence of a defense in the accusation charging commission of the offense.

(c) The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of a defense is submitted to the jury, the court shall charge that a reasonable doubt on the issue requires that the defendant be acquitted.

(e) A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense.

Sec. 2.04. AFFIRMATIVE DEFENSE. (a) An affirmative defense in this code is so labeled by the phrase: "It is an affirmative defense to prosecution . . ."

(b) The prosecuting attorney is not required to negate the existence of an affirmative defense in the accusation charging commission of the offense.

(c) The issue of the existence of an affirmative defense is not submitted to the jury unless evidence is admitted supporting the defense.

(d) If the issue of the existence of an affirmative defense is submitted to the jury, the court shall charge that the defendant must prove the affirmative defense by a preponderance of evidence.

Sec. 2.05. PRESUMPTION. When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

CHAPTER 3. MULTIPLE PROSECUTIONS

Sec. 3.01. DEFINITION. In this chapter, "criminal episode" means the commission of two or more offenses, regardless of whether the harm is directed toward or inflicted upon more than one person or item of property, under the following circumstances:

(1) the offenses are committed pursuant to the same transaction or pursuant to two or more transactions that are connected or constitute a common scheme or plan; or

(2) the offenses are the repeated commission of the same or similar offenses.

Sec. 3.02. CONSOLIDATION AND JOINDER OF PROSECUTIONS. (a) A defendant may be prosecuted in a single criminal action for all offenses arising out of the same criminal episode.

(b) When a single criminal action is based on more than one charging instrument within the jurisdiction of the trial court, the state shall file written notice of the action not less than 30 days prior to the trial.

(c) If a judgment of guilt is reversed, set aside, or vacated, and a new trial ordered, the state may not prosecute in a single criminal action in the new trial any offense not joined in the former prosecution unless evidence to establish probable guilt for that offense was not known to the appropriate prosecuting official at the time the first prosecution commenced.

Sec. 3.03. SENTENCES FOR OFFENSES ARISING OUT OF SAME CRIMINAL EPISODE. When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, sentence for each offense for which he has been found guilty shall be pronounced. Such sentences shall run concurrently.

Sec. 3.04. SEVERANCE. (a) Whenever two or more offenses have been consolidated or joined for trial under Section 3.02 ~~[of this code]~~, the defendant shall have a right to a severance of the offenses.

(b) In the event of severance under this section, the provisions of Section 3.03 ~~[of this code]~~ do not apply, and the court in its discretion may order the sentences to run either concurrently or consecutively.

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 6. CULPABILITY GENERALLY

Sec. 6.01. REQUIREMENT OF VOLUNTARY ACT OR OMISSION. (a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

(b) Possession is a voluntary act if the possessor knowingly obtains or receives the thing possessed or is aware of his control of the thing for a sufficient time to permit him to terminate his control.

(c) A person who omits to perform an act does not commit an offense unless a law as defined by Section 1.07 ~~[of this code]~~ provides that the omission is an offense or otherwise provides that he has a duty to perform the act.

Sec. 6.02. REQUIREMENT OF CULPABILITY. (a) Except as provided in Subsection (b) ~~[of this section]~~, a person does not commit an offense unless he intentionally, knowingly, recklessly, or with criminal negligence engages in conduct as the definition of the offense requires.

(b) If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.

(c) If the definition of an offense does not prescribe a culpable mental state, but one is nevertheless required under Subsection (b) ~~[of this section]~~, intent, knowledge, or recklessness suffices to establish criminal responsibility.

(d) Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- (1) intentional;
- (2) knowing;
- (3) reckless;
- (4) criminal negligence.

(e) Proof of a higher degree of culpability than that charged constitutes proof of the culpability charged.

Sec. 6.03. DEFINITIONS OF CULPABLE MENTAL STATES. (a) A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

(b) A person acts knowingly, or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(c) A person acts recklessly, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(d) A person acts with criminal negligence, or is criminally negligent, with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Sec. 6.04. CAUSATION: CONDUCT AND RESULTS. (a) A person is criminally responsible if the result would not have occurred but for his conduct, operating either alone or concurrently with another cause, unless the concurrent cause was clearly sufficient to produce the result and the conduct of the actor clearly insufficient.

(b) A person is nevertheless criminally responsible for causing a result if the only difference between what actually occurred and what he desired, contemplated, or risked is that:

- (1) a different offense was committed; or
- (2) a different person or property was injured, harmed, or otherwise affected.

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER. (a) A person is criminally responsible for an offense committed by the conduct of another if:

- (1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;
- (2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or
- (3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

- (1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or
- (2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

[Sections 7.04 to 7.20 reserved for expansion]

SUBCHAPTER B. CORPORATIONS AND ASSOCIATIONS

Sec. 7.21. DEFINITIONS. In this subchapter:

- (1) "Agent" means a director, officer, employee, or other person authorized to act in behalf of a corporation or association.
- (2) "High managerial agent" means:
 - (A) a partner in a partnership;
 - (B) an officer of a corporation or association;
 - (C) an agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

Sec. 7.22. CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION.

(a) If conduct constituting an offense is performed by an agent acting in behalf of a corporation or association and within the scope of his office or employment, the corporation or association is criminally responsible for an offense defined:

- (1) in this code where corporations and associations are made subject thereto;
- (2) by law other than this code in which a legislative purpose to impose criminal responsibility on corporations or associations plainly appears; or
- (3) by law other than this code for which strict liability is imposed, unless a legislative purpose not to impose criminal responsibility on corporations or associations plainly appears.

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

- (1) a majority of the governing board acting in behalf of the corporation or association; or
- (2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

Sec. 7.23. CRIMINAL RESPONSIBILITY OF PERSON FOR CONDUCT IN BEHALF OF CORPORATION OR ASSOCIATION. (a) An individual is criminally responsible for conduct that he performs in the name of or in behalf of a corporation or association to the same extent as if the conduct were performed in his own name or behalf.

(b) An agent having primary responsibility for the discharge of a duty to act imposed by law on a corporation or association is criminally responsible for omission to discharge the duty to the same extent as if the duty were imposed by law directly on him.

(c) If an individual is convicted of conduct constituting an offense performed in the name of or on behalf of a corporation or association, he is subject to the sentence authorized by law for an individual convicted of the offense.

Sec. 7.24. DEFENSE TO CRIMINAL RESPONSIBILITY OF CORPORATION OR ASSOCIATION. It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) [~~of this code~~] that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

CHAPTER 8. GENERAL DEFENSES TO CRIMINAL RESPONSIBILITY

Sec. 8.01. **INSANITY.** (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong.

(b) The term “mental disease or defect” does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

Sec. 8.02. **MISTAKE OF FACT.** (a) It is a defense to prosecution that the actor through mistake formed a reasonable belief about a matter of fact if his mistaken belief negated the kind of culpability required for commission of the offense.

(b) Although an actor's mistake of fact may constitute a defense to the offense charged, he may nevertheless be convicted of any lesser included offense of which he would be guilty if the fact were as he believed.

Sec. 8.03. **MISTAKE OF LAW.** (a) It is no defense to prosecution that the actor was ignorant of the provisions of any law after the law has taken effect.

(b) It is an affirmative defense to prosecution that the actor reasonably believed the conduct charged did not constitute a crime and that he acted in reasonable reliance upon:

(1) an official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(2) a written interpretation of the law contained in an opinion of a court of record or made by a public official charged by law with responsibility for interpreting the law in question.

(c) Although an actor's mistake of law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the law were as he believed.

Sec. 8.04. **INTOXICATION.** (a) Voluntary intoxication does not constitute a defense to the commission of crime.

(b) Evidence of temporary insanity caused by intoxication may be introduced by the actor in mitigation of the penalty attached to the offense for which he is being tried.

(c) When temporary insanity is relied upon as a defense and the evidence tends to show that such insanity was caused by intoxication, the court shall charge the jury in accordance with the provisions of this section.

(d) For purposes of this section “intoxication” means disturbance of mental or physical capacity resulting from the introduction of any substance into the body.

Sec. 8.05. **DURESS.** (a) It is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or another.

(b) In a prosecution for an offense that does not constitute a felony, it is an affirmative defense to prosecution that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force.

(c) Compulsion within the meaning of this section exists only if the force or threat of force would render a person of reasonable firmness incapable of resisting the pressure.

(d) The defense provided by this section is unavailable if the actor intentionally, knowingly, or recklessly placed himself in a situation in which it was probable that he would be subjected to compulsion.

(e) It is no defense that a person acted at the command or persuasion of his spouse, unless he acted under compulsion that would establish a defense under this section.

Sec. 8.06. **ENTRAPMENT.** (a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

Sec. 8.07. AGE AFFECTING CRIMINAL RESPONSIBILITY. (a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957[~~as amended~~] (Article 67011-4, Vernon's Texas Civil Statutes), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only other than public intoxication; or

(5) a violation of a penal ordinance of a political subdivision.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957[~~as amended~~] (Article 67011-4, Vernon's Texas Civil Statutes), except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense);

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only other than public intoxication; or

(5) a violation of a penal ordinance of a political subdivision.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 9.01. DEFINITIONS. In this chapter:

(1) "Custody" means:

(A) under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

(2) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a

violation of conditions of community supervision [~~probation~~] or parole, or following leave that is part of an intermittent sentence.

(3) "Deadly force" means force that is intended or known by the actor to cause, or in the manner of its use or intended use is capable of causing, death or serious bodily injury.

Sec. 9.02. JUSTIFICATION AS A DEFENSE. It is a defense to prosecution that the conduct in question is justified under this chapter.

Sec. 9.03. CONFINEMENT AS JUSTIFIABLE FORCE. Confinement is justified when force is justified by this chapter if the actor takes reasonable measures to terminate the confinement as soon as he knows he safely can unless the person confined has been arrested for an offense.

Sec. 9.04. THREATS AS JUSTIFIABLE FORCE. The threat of force is justified when the use of force is justified by this chapter. For purposes of this section, a threat to cause death or serious bodily injury by the production of a weapon or otherwise, as long as the actor's purpose is limited to creating an apprehension that he will use deadly force if necessary, does not constitute the use of deadly force.

Sec. 9.05. RECKLESS INJURY OF INNOCENT THIRD PERSON. Even though an actor is justified under this chapter in threatening or using force or deadly force against another, if in doing so he also recklessly injures or kills an innocent third person, the justification afforded by this chapter is unavailable in a prosecution for the reckless injury or killing of the innocent third person.

Sec. 9.06. CIVIL REMEDIES UNAFFECTED. The fact that conduct is justified under this chapter does not abolish or impair any remedy for the conduct that is available in a civil suit.

[Sections 9.07 to 9.20 reserved for expansion]

SUBCHAPTER B. JUSTIFICATION GENERALLY

Sec. 9.21. PUBLIC DUTY. (a) Except as qualified by Subsections (b) and (c) [~~of this section~~], conduct is justified if the actor reasonably believes the conduct is required or authorized by law, by the judgment or order of a competent court or other governmental tribunal, or in the execution of legal process.

(b) The other sections of this chapter control when force is used against a person to protect persons (Subchapter C), to protect property (Subchapter D), for law enforcement (Subchapter E), or by virtue of a special relationship (Subchapter F).

(c) The use of deadly force is not justified under this section unless the actor reasonably believes the deadly force is specifically required by statute or unless it occurs in the lawful conduct of war. If deadly force is so justified, there is no duty to retreat before using it.

(d) The justification afforded by this section is available if the actor reasonably believes:

(1) the court or governmental tribunal has jurisdiction or the process is lawful, even though the court or governmental tribunal lacks jurisdiction or the process is unlawful; or

(2) his conduct is required or authorized to assist a public servant in the performance of his official duty, even though the servant exceeds his lawful authority.

Sec. 9.22. NECESSITY. Conduct is justified if:

(1) the actor reasonably believes the conduct is immediately necessary to avoid imminent harm;

(2) the desirability and urgency of avoiding the harm clearly outweigh, according to ordinary standards of reasonableness, the harm sought to be prevented by the law *proscribing* [~~prescribing~~] the conduct; and

(3) a legislative purpose to exclude the justification claimed for the conduct does not otherwise plainly appear.

[Sections 9.23 to 9.30 reserved for expansion]

SUBCHAPTER C. PROTECTION OF PERSONS

Sec. 9.31. **SELF-DEFENSE.** (a) Except as provided in Subsection (b) ~~[of this section]~~, a person is justified in using force against another when and to the degree he reasonably believes the force is immediately necessary to protect himself against the other's use or attempted use of unlawful force.

(b) The use of force against another is not justified:

(1) in response to verbal provocation alone;

(2) to resist an arrest or search that the actor knows is being made by a peace officer, or by a person acting in a peace officer's presence and at his direction, even though the arrest or search is unlawful, unless the resistance is justified under Subsection (c) ~~[of this section]~~;

(3) if the actor consented to the exact force used or attempted by the other; ~~[or]~~

(4) if the actor provoked the other's use or attempted use of unlawful force, unless:

(A) the actor abandons the encounter, or clearly communicates to the other his intent to do so reasonably believing he cannot safely abandon the encounter; and

(B) the other nevertheless continues or attempts to use unlawful force against the actor; or

(5) *if the actor sought an explanation from or discussion with the other person concerning the actor's differences with the other person while the actor was carrying a weapon in violation of Section 46.02.*

(c) The use of force to resist an arrest or search is justified:

(1) if, before the actor offers any resistance, the peace officer (or person acting at his direction) uses or attempts to use greater force than necessary to make the arrest or search; and

(2) when and to the degree the actor reasonably believes the force is immediately necessary to protect himself against the peace officer's (or other person's) use or attempted use of greater force than necessary.

(d) The use of deadly force is not justified under this subchapter except as provided in Sections 9.32, 9.33, and 9.34 ~~[of this code]~~.

Sec. 9.32. **DEADLY FORCE IN DEFENSE OF PERSON.** A person is justified in using deadly force against another:

(1) if he would be justified in using force against the other under Section 9.31 ~~[of this code]~~;

(2) if a reasonable person in the actor's situation would not have retreated; and

(3) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to protect himself against the other's use or attempted use of unlawful deadly force; or

(B) to prevent the other's imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery.

Sec. 9.33. **DEFENSE OF THIRD PERSON.** A person is justified in using force or deadly force against another to protect a third person if:

(1) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 ~~[of this code]~~ in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(2) the actor reasonably believes that his intervention is immediately necessary to protect the third person.

Sec. 9.34. **PROTECTION OF LIFE OR HEALTH.** (a) A person is justified in using force, but not deadly force, against another when and to the degree he reasonably believes

the force is immediately necessary to prevent the other from committing suicide or inflicting serious bodily injury to himself.

(b) A person is justified in using both force and deadly force against another when and to the degree he reasonably believes the force or deadly force is immediately necessary to preserve the other's life in an emergency.

[Sections 9.35 to 9.40 reserved for expansion]

SUBCHAPTER D. PROTECTION OF PROPERTY

Sec. 9.41. PROTECTION OF ONE'S OWN PROPERTY. (a) A person in lawful possession of land or tangible, movable property is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to prevent or terminate the other's trespass on the land or unlawful interference with the property.

(b) A person unlawfully dispossessed of land or tangible, movable property by another is justified in using force against the other when and to the degree the actor reasonably believes the force is immediately necessary to reenter the land or recover the property if the actor uses the force immediately or in fresh pursuit after the dispossession and:

(1) the actor reasonably believes the other had no claim of right when he dispossessed the actor; or

(2) the other accomplished the dispossession by using force, threat, or fraud against the actor.

Sec. 9.42. DEADLY FORCE TO PROTECT PROPERTY. A person is justified in using deadly force against another to protect land or tangible, movable property:

(1) if he would be justified in using force against the other under Section 9.41 ~~[of this code]~~; and

(2) when and to the degree he reasonably believes the deadly force is immediately necessary:

(A) to prevent the other's imminent commission of arson, burglary, robbery, aggravated robbery, theft during the nighttime, or criminal mischief during the nighttime; or

(B) to prevent the other who is fleeing immediately after committing burglary, robbery, aggravated robbery, or theft during the nighttime from escaping with the property; and

(3) he reasonably believes that:

(A) the land or property cannot be protected or recovered by any other means; or

(B) the use of force other than deadly force to protect or recover the land or property would expose the actor or another to a substantial risk of death or serious bodily injury.

Sec. 9.43. PROTECTION OF THIRD PERSON'S PROPERTY. A person is justified in using force or deadly force against another to protect land or tangible, movable property of a third person if, under the circumstances as he reasonably believes them to be, the actor would be justified under Section 9.41 or 9.42 ~~[of this code]~~ in using force or deadly force to protect his own land or property and:

(1) the actor reasonably believes the unlawful interference constitutes attempted or consummated theft of or criminal mischief to the tangible, movable property; or

(2) the actor reasonably believes that:

(A) the third person has requested his protection of the land or property;

(B) he has a legal duty to protect the third person's land or property; or

(C) the third person whose land or property he uses force or deadly force to protect is the actor's spouse, parent, or child, resides with the actor, or is under the actor's care.

Sec. 9.44. USE OF DEVICE TO PROTECT PROPERTY. The justification afforded by Sections 9.41 and 9.43 ~~[of this code]~~ applies to the use of a device to protect land or tangible, movable property if:

- (1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and
- (2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Sections 9.45 to 9.50 reserved for expansion]

SUBCHAPTER E. LAW ENFORCEMENT

Sec. 9.51. ARREST AND SEARCH. (a) A peace officer, or a person acting in a peace officer's presence and at his direction, is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making an arrest or search, or to prevent or assist in preventing escape after arrest, if:

(1) the actor reasonably believes the arrest or search is lawful or, if the arrest or search is made under a warrant, he reasonably believes the warrant is valid; and

(2) before using force, the actor manifests his purpose to arrest or search and identifies himself as a peace officer or as one acting at a peace officer's direction, unless he reasonably believes his purpose and identity are already known by or cannot reasonably be made known to the person to be arrested.

(b) A person other than a peace officer (or one acting at his direction) is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to make or assist in making a lawful arrest, or to prevent or assist in preventing escape after lawful arrest if, before using force, the actor manifests his purpose to and the reason for the arrest or reasonably believes his purpose and the reason are already known by or cannot reasonably be made known to the person to be arrested.

(c) A peace officer is justified in using deadly force against another when and to the degree the peace officer reasonably believes the deadly force is immediately necessary to make an arrest, or to prevent escape after arrest, if the use of force would have been justified under Subsection (a) ~~[of this section]~~ and:

(1) the actor reasonably believes the conduct for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to the actor or another if the arrest is delayed.

(d) A person other than a peace officer acting in a peace officer's presence and at his direction is justified in using deadly force against another when and to the degree the person reasonably believes the deadly force is immediately necessary to make a lawful arrest, or to prevent escape after a lawful arrest, if the use of force would have been justified under Subsection (b) ~~[of this section]~~ and:

(1) the actor reasonably believes the felony or offense against the public peace for which arrest is authorized included the use or attempted use of deadly force; or

(2) the actor reasonably believes there is a substantial risk that the person to be arrested will cause death or serious bodily injury to another if the arrest is delayed.

(e) There is no duty to retreat before using deadly force justified by Subsection (c) or (d) ~~[of this section]~~.

(f) Nothing in this section relating to the actor's manifestation of purpose or identity shall be construed as conflicting with any other law relating to the issuance, service, and execution of an arrest or search warrant either under the laws of this state or the United States.

(g) Deadly force may only be used under the circumstances enumerated in Subsections (c) and (d) ~~[of this section]~~.

Sec. 9.52. PREVENTION OF ESCAPE FROM CUSTODY. The use of force to prevent the escape of an arrested person from custody is justifiable when the force could have been employed to effect the arrest under which the person is in custody, except that a guard employed by a *correctional facility* ~~[penal institution]~~ or a peace officer is justified in using any force, including deadly force, that he *reasonably* believes to be immediately necessary to

prevent the escape of a person from *the correctional facility* [a jail, prison, or other institution for the detention of persons charged with or convicted of a crime].

Sec. 9.53. MAINTAINING SECURITY IN *CORRECTIONAL FACILITY* [PENAL INSTITUTION]. *An officer or employee of a correctional facility* [A peace officer, jailer, or guard employed at a municipal or county jail, or a guard or correctional officer employed by the Texas Department of Corrections] is justified in using force against a person in custody when and to the degree the [peace] officer[, jailer, guard,] or employee [correctional officer] reasonably believes the force is necessary to maintain the security of the *correctional facility* [penal institution], the safety or security of other persons in custody or employed by the *correctional facility* [penal institution], or his own safety or security.

[Sections 9.54 to 9.60 reserved for expansion]

SUBCHAPTER F. SPECIAL RELATIONSHIPS

Sec. 9.61. PARENT—CHILD. (a) The use of force, but not deadly force, against a child younger than 18 years is justified:

(1) if the actor is the child's parent or stepparent or is acting in loco parentis to the child; and

(2) when and to the degree the actor reasonably believes the force is necessary to discipline the child or to safeguard or promote his welfare.

(b) For purposes of this section, "in loco parentis" includes grandparent and guardian, any person acting by, through, or under the direction of a court with jurisdiction over the child, and anyone who has express or implied consent of the parent or parents.

Sec. 9.62. EDUCATOR—STUDENT. The use of force, but not deadly force, against a person is justified:

(1) if the actor is entrusted with the care, supervision, or administration of the person for a special purpose; and

(2) when and to the degree the actor reasonably believes the force is necessary to further the special purpose or to maintain discipline in a group.

Sec. 9.63. GUARDIAN—INCOMPETENT. The use of force, but not deadly force, against a mental incompetent is justified:

(1) if the actor is the incompetent's guardian or someone similarly responsible for the general care and supervision of the incompetent; and

(2) when and to the degree the actor reasonably believes the force is necessary:

(A) to safeguard and promote the incompetent's welfare; or

(B) if the incompetent is in an institution for his care and custody, to maintain discipline in the institution.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 12.01. PUNISHMENT IN ACCORDANCE WITH CODE. (a) A person adjudged guilty of an offense under this code shall be punished in accordance with this chapter and the Code of Criminal Procedure[, 1965].

(b) Penal laws enacted after the effective date of this code shall be classified for punishment purposes in accordance with this chapter.

(c) This chapter does not deprive a court of authority conferred by law to forfeit property, dissolve a corporation, suspend or cancel a license or permit, remove a person from office, cite for contempt, or impose any other civil penalty. The civil penalty may be included in the sentence.

Sec. 12.02. CLASSIFICATION OF OFFENSES. Offenses are designated as felonies or misdemeanors.

Sec. 12.03. CLASSIFICATION OF MISDEMEANORS. (a) Misdemeanors are classified according to the relative seriousness of the offense into three categories:

- (1) Class A misdemeanors;
- (2) Class B misdemeanors;
- (3) Class C misdemeanors.

(b) An offense designated a misdemeanor in this code without specification as to punishment or category is a Class C misdemeanor.

(c) Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage.

Sec. 12.04. CLASSIFICATION OF FELONIES. (a) Felonies are classified according to the relative seriousness of the offense into *five* [~~four~~] categories:

- (1) capital felonies;
- (2) felonies of the first degree;
- (3) felonies of the second degree;
- (4) felonies of the third degree; *and*
- (5) *state jail felonies*.

(b) An offense designated a felony in this code without specification as to category is a *state jail felony* [~~of the third degree~~].

[Sections 12.05 to 12.20 reserved for expansion]

SUBCHAPTER B. ORDINARY MISDEMEANOR PUNISHMENTS

Sec. 12.21. CLASS A MISDEMEANOR. An individual adjudged guilty of a Class A misdemeanor shall be punished by:

- (1) a fine not to exceed \$4,000 [~~\$3,000~~];
- (2) confinement in jail for a term not to exceed one year; or
- (3) both such fine and *confinement* [~~imprisonment~~].

Sec. 12.22. CLASS B MISDEMEANOR. An individual adjudged guilty of a Class B misdemeanor shall be punished by:

- (1) a fine not to exceed \$2,000 [~~\$1,500~~];
- (2) confinement in jail for a term not to exceed 180 days; or
- (3) both such fine and *confinement* [~~imprisonment~~].

Sec. 12.23. CLASS C MISDEMEANOR. An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.

[Sections 12.24 to 12.30 reserved for expansion]

SUBCHAPTER C. ORDINARY FELONY PUNISHMENTS

Sec. 12.31. CAPITAL FELONY. (a) An individual adjudged guilty of a capital felony in a case in which the state seeks the death penalty shall be punished by *imprisonment* [~~confinement~~] in the institutional division [~~of the Texas Department of Criminal Justice~~] for life or by death. An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by *imprisonment* [~~confinement~~] in the institutional division for life.

(b) In a capital felony trial in which the state seeks the death penalty, prospective jurors shall be informed that a sentence of life imprisonment or death is mandatory on conviction of a capital felony. In a capital felony trial in which the state does not seek the death penalty,

prospective jurors shall be informed that the state is not seeking the death penalty and that a sentence of life imprisonment is mandatory on conviction of the capital felony.

Sec. 12.32. **FIRST DEGREE** ~~[FIRST-DEGREE]~~ **FELONY PUNISHMENT.** (a) An individual adjudged guilty of a felony of the first degree shall be punished by *imprisonment* ~~[confinement]~~ in the *institutional division* ~~[Texas Department of Corrections]~~ for life or for any term of not more than 99 years or less than 5 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.

Sec. 12.33. **SECOND DEGREE** ~~[SECOND-DEGREE]~~ **FELONY PUNISHMENT.** (a) An individual adjudged guilty of a felony of the second degree shall be punished by *imprisonment* ~~[confinement]~~ in the *institutional division* ~~[Texas Department of Corrections]~~ for any term of not more than 20 years or less than 2 years.

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.

Sec. 12.34. **THIRD DEGREE** ~~[THIRD-DEGREE]~~ **FELONY PUNISHMENT.** (a) An individual adjudged guilty of a felony of the third degree shall be punished by *imprisonment*; ~~[(1) confinement]~~ in the *institutional division* ~~[of the Texas Department of Criminal Justice]~~ for any term of not more than 10 years or less than 2 years; ~~or~~

~~[(2) confinement in a community correctional facility for any term of not more than 1 year].~~

(b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.

Sec. 12.35. **STATE JAIL FELONY PUNISHMENT.** (a) *Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days.*

(b) *In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.*

(c) *An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense that:*

(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or

(2) the individual has previously been finally convicted of any felony:

(A) listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or

(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.

[Sections 12.36 [12.35] to 12.40 reserved for expansion]

SUBCHAPTER D. EXCEPTIONAL SENTENCES

Sec. 12.41. **CLASSIFICATION OF OFFENSES OUTSIDE THIS CODE.** For purposes of this subchapter, any conviction not obtained from a prosecution under this code shall be classified as follows:

(1) "felony of the third degree" if *imprisonment* ~~[confinement]~~ in a penitentiary is affixed to the offense as a possible punishment;

(2) "Class B misdemeanor" if the offense is not a felony and confinement in a jail is affixed to the offense as a possible punishment;

(3) "Class C misdemeanor" if the offense is punishable by fine only.

Sec. 12.42. **PENALTIES FOR REPEAT AND HABITUAL FELONY OFFENDERS.**

(a) If it is ~~[be]~~ shown on the trial of a state jail felony punishable under Section 12.35(c) or

on the trial of a third-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished for a second-degree felony.

(b) If it is [be] shown on the trial of a second-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished for a first-degree felony.

(c) If it is [be] shown on the trial of a first-degree felony that the defendant has been once before convicted of a [any] felony, on conviction he shall be punished by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life, or for any term of not more than 99 years or less than 15 years. In addition to imprisonment, an individual may be punished by a fine not to exceed \$10,000.

(d) If it is [be] shown on the trial of a [any] felony offense that the defendant has previously been finally convicted of two felony offenses, and the second previous felony conviction is for an offense that occurred subsequent to the first previous conviction having become final, on conviction he shall be punished by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life, or for any term of not more than 99 years or less than 25 years.

(e) A previous conviction for a state jail felony may be used for enhancement purposes under this section only if the defendant was punished for the offense under Section 12.35(c).

~~Sec. 12.422. IMPOSITION OF SUBSTANCE ABUSE FELONY PUNISHMENT. (a) A court may punish an eligible defendant convicted of an offense listed in Subsection (d) of this section that is otherwise punishable as a felony of the first, second, or third degree by imposing on the defendant:~~

~~(1) a term of confinement and treatment in a substance abuse treatment facility operated by the community justice assistance division of the Texas Department of Criminal Justice for an indeterminate term of not more than one year or less than six months, except that the minimum term for a defendant whose underlying offense is an offense under Article 67011-1, Revised Statutes, is 30 days;~~

~~(2) a term of not less than two years or more than 10 years in the institutional division of the Texas Department of Criminal Justice, to begin not later than the 30th day after the day on which the defendant is released from a substance abuse facility; and~~

~~(3) a fine not to exceed \$10,000.~~

~~(b) A defendant is an eligible defendant for the purposes of this section if:~~

~~(1) a pre-sentence investigation conducted under Section 9, Article 42.12, Code of Criminal Procedure, or any other indication suggests that drug or alcohol abuse significantly contributed to the commission of the offense;~~

~~(2) the court determines that there are no other community-based programs or facilities that are suitable for the treatment of the defendant; and~~

~~(3) after considering the gravity and circumstances of the offense committed, the court finds that the punishment would best serve the ends of justice.~~

~~(c) A conviction of an offense for which punishment is imposed under this section is a final conviction for the purposes of Section 12.42 of this code.~~

~~(d) This section applies to all felony offenses other than murder under Section 19.02, Penal Code, or an offense listed under Section 3g(a)(1), Article 42.12, Code of Criminal Procedure, or a sentence the judgment for which contains an affirmative finding under Section 3g(a)(2) of that article.]~~

Sec. 12.43. PENALTIES FOR REPEAT AND HABITUAL MISDEMEANOR OFFENDERS. (a) If it is [be] shown on the trial of a Class A misdemeanor that the defendant has been before convicted of a Class A misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than one year or less than 90 days.

(b) If it is [be] shown on the trial of a Class B misdemeanor that the defendant has been before convicted of a Class A or Class B misdemeanor or any degree of felony, on conviction he shall be punished by confinement in jail for any term of not more than 180 days or less than 30 days.

(c) If the punishment scheme for an offense contains a specific enhancement provision increasing punishment for a defendant who has previously been convicted of the offense, the specific enhancement provision controls over this section.

Sec. 12.44. REDUCTION OF THIRD DEGREE OR STATE JAIL [THIRD DEGREE] FELONY PUNISHMENT TO MISDEMEANOR PUNISHMENT. (a) A court may punish a defendant *who is* convicted of a third degree felony by imposing the *confinement permissible as punishment for a Class A misdemeanor, a fine not to exceed \$10,000, or both such fine and confinement, or may punish a defendant who is convicted of a state jail felony by imposing the confinement permissible as punishment for a Class B misdemeanor, a fine not to exceed \$10,000, or both such fine and confinement* if, after considering the gravity and circumstances of the felony committed and the history, character, and rehabilitative needs of the defendant, the court finds that such punishment would best serve the ends of justice.

(b) When a court is authorized to impose punishment for a lesser category of offense as provided in Subsection (a) ~~[of this section]~~, the court may authorize the prosecuting attorney to prosecute initially for the lesser category of offense.

Sec. 12.45. ADMISSION OF UNADJUDICATED OFFENSE. (a) A person may, with the consent of the attorney for the state, admit during the sentencing hearing his guilt of one or more unadjudicated offenses and request the court to take each into account in determining sentence for the offense or offenses of which he stands adjudged guilty.

(b) Before a court may take into account an admitted offense over which exclusive venue lies in another county or district, the court must obtain permission from the prosecuting attorney with jurisdiction over the offense.

(c) If a court lawfully takes into account an admitted offense, prosecution is barred for that offense.

Sec. 12.46. USE OF PRIOR CONVICTIONS. The use of a conviction for enhancement purposes shall not preclude the subsequent use of such conviction for enhancement purposes.

~~**Sec. 12.47. PENALTY IF CRIME COMMITTED AGAINST CHILD DURING RITUAL OR CEREMONY.** (a) The punishment prescribed for an offense listed in Subsection (b) of this section is increased to the punishment prescribed for the next highest category of offense if it is shown on the trial of the offense that:~~

~~[(1) the victim of the offense was younger than 17 years of age at the time of the offense; and~~

~~[(2) the offense was committed as part of a ritual or ceremony.~~

~~[(b) This section applies to an offense under the following sections of the Penal Code:~~

~~[(1) Section 21.11 (Indecency with a Child);~~

~~[(2) Section 22.01 (Assault);~~

~~[(3) Section 22.011 (Sexual Assault);~~

~~[(4) Section 22.02 (Aggravated Assault);~~

~~[(5) Section 22.021 (Aggravated Sexual Assault);~~

~~[(6) Section 22.04 (Injury to a Child or an Elderly Individual);~~

~~[(7) Section 22.041 (Abandoning or Endangering Child);~~

~~[(8) Section 25.02 (Incest);~~

~~[(9) Section 25.06 (Solicitation of a Child);~~

~~[(10) Section 25.11 (Sale or Purchase of Child);~~

~~[(11) Section 43.24 (Sale, Distribution, or Display of Harmful Material to Minor); and~~

~~[(12) Section 43.25 (Sexual Performance by a Child).~~

~~[(c) This section does not apply to an offense for which the punishment otherwise prescribed is the punishment for a first degree felony or a capital felony.]~~

[Sections 12.47 [12.48] to 12.50 reserved for expansion]

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

Sec. 12.51. AUTHORIZED PUNISHMENTS FOR CORPORATIONS AND ASSOCIATIONS. (a) If a corporation or association is adjudged guilty of an offense that provides a penalty consisting of a fine only, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed the fine provided by the offense.

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

- (1) \$20,000 if the offense is a felony of any category;
- (2) \$10,000 if the offense is a Class A or Class B misdemeanor;
- (3) \$2,000 if the offense is a Class C misdemeanor; or

(4) \$50,000 if, as a result of an offense classified as a felony or Class A misdemeanor, an individual suffers serious bodily injury or death.

(c) In lieu of the fines authorized by Subsections (a), (b)(1), (b)(2), and (b)(4) [of this section], if a court finds that the corporation or association gained money or property or caused personal injury or death, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation or association to be lost or damaged, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation or association that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

(e) *On conviction of a corporation or association, the court shall notify the attorney general of that fact.*

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

Sec. 15.01. CRIMINAL ATTEMPT. (a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a *state jail* felony [of the third degree], the offense is a Class A misdemeanor.

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a *state jail* felony ~~[of the third degree]~~, the offense is a Class A misdemeanor.

Sec. 15.03. CRIMINAL SOLICITATION. (a) A person commits an offense if, with intent that a capital felony or felony of the first degree be committed, he requests, commands, or attempts to induce another to engage in specific conduct that, under the circumstances surrounding his conduct as the actor believes them to be, would constitute the felony or make the other a party to its commission.

(b) A person may not be convicted under this section on the uncorroborated testimony of the person allegedly solicited and unless the solicitation is made under circumstances strongly corroborative of both the solicitation itself and the actor's intent that the other person act on the solicitation.

(c) It is no defense to prosecution under this section that:

(1) the person solicited is not criminally responsible for the felony solicited;

(2) the person solicited has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution;

(3) the actor belongs to a class of persons that by definition of the felony solicited is legally incapable of committing the offense in an individual capacity; or

(4) the felony solicited was actually committed.

(d) An offense under this section is:

(1) a felony of the first degree if the offense solicited is a capital offense; or

(2) a felony of the second degree if the offense solicited is a felony of the first degree.

Sec. 15.04. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 15.01 ~~[of this code]~~ that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor avoided commission of the offense attempted by abandoning his criminal conduct or, if abandonment was insufficient to avoid commission of the offense, by taking further affirmative action that prevented the commission.

(b) It is an affirmative defense to prosecution under Section 15.02 or 15.03 ~~[of this code]~~ that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor countermanded his solicitation or withdrew from the conspiracy before commission of the object offense and took further affirmative action that prevented the commission of the object offense.

(c) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(d) Evidence that the defendant renounced his criminal objective by abandoning his criminal conduct, countermanding his solicitation, or withdrawing from the conspiracy before the criminal offense was committed and made substantial effort to prevent the commission of the object offense shall be admissible as mitigation at the hearing on punishment if he has been found guilty of criminal attempt, criminal solicitation, or criminal conspiracy; and in the

event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided for the offense committed.

Sec. 15.05. NO OFFENSE. Attempt or conspiracy to commit, or solicitation of, a preparatory offense defined in this chapter is not an offense.

CHAPTER 16. CRIMINAL INSTRUMENTS AND INTERCEPTION OF WIRE OR ORAL COMMUNICATION

Sec. 16.01. UNLAWFUL USE OF CRIMINAL INSTRUMENT. (a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) [~~of this section~~] is one category lower than the offense intended. An offense under Subsection (a)(2) [~~of this section~~] is a *state jail felony* [~~of the third degree~~].

Sec. 16.02. UNLAWFUL INTERCEPTION, USE, OR DISCLOSURE OF WIRE, ORAL, OR ELECTRONIC COMMUNICATIONS. (a) In this section, "covert entry," "communication common carrier," "contents," "electronic, mechanical, or other device," "intercept," "investigative or law enforcement officer," "oral communication," "electronic communication," "readily accessible to the general public," and "wire communication" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

(b) A [~~Except as specifically provided by Subsection (c) of this section, a~~] person commits an offense if he:

(1) intentionally intercepts, endeavors to intercept, or procures another person to intercept or endeavor to intercept a wire, oral, or electronic communication;

(2) intentionally discloses or endeavors to disclose to another person the contents of a wire, oral, or electronic communication if he knows or has reason to know the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(3) intentionally uses or endeavors to use the contents of a wire, oral, or electronic communication if he knows or is reckless about whether the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(4) knowingly or intentionally effects a covert entry for the purpose of intercepting wire, oral, or electronic communications without court order or authorization; or

(5) intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when the device:

(A) is affixed to, or otherwise transmits a signal through a wire, cable, or other connection used in wire communications; or

(B) transmits communications by radio or interferes with the transmission of communications by radio.

(c) It is an *affirmative defense to prosecution under* [~~exception to the application of~~] Subsection (b) [~~of this section~~] that:

(1) an operator of a switchboard or an officer, employee, or agent of a communication common carrier whose facilities are used in the transmission of a wire or electronic communication intercepts a communication or discloses or uses an intercepted communication in the normal course of employment while engaged in an activity that is a necessary

incident to the rendition of service or to the protection of the rights or property of the carrier of the communication, unless the interception results from the communication common carrier's use of service observing or random monitoring for purposes other than mechanical or service quality control checks;

(2) an officer, employee, or agent of a communication common carrier provides information, facilities, or technical assistance to an investigative or law enforcement officer who is authorized as provided by this article to intercept a wire, oral, or electronic communication;

(3) a person acting under color of law intercepts a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception;

(4) a person not acting under color of law intercepts a wire, oral, or electronic communication if the person is a party to the communication or if one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of this state or for the purpose of committing any other injurious act;

(5) a person acting under color of law intercepts a wire, oral, or electronic communication if:

(A) prior consent for the interception has been given by a magistrate;

(B) an immediate life-threatening situation exists;

(C) the person is a member of a law enforcement unit specially trained to:

(i) respond to and deal with life-threatening situations; or

(ii) install electronic, mechanical, or other devices; and

(D) the interception ceases immediately on termination of the life-threatening situation;

(6) an officer, employee, or agent of the Federal Communications Commission intercepts a communication transmitted by radio or discloses or uses an intercepted communication in the normal course of employment and in the discharge of the monitoring responsibilities exercised by the Federal Communications Commission in the enforcement of Chapter 5, Title 47, United States Code;

(7) a person intercepts or obtains access to an electronic communication that was made through an electronic communication system that is configured to permit the communication to be readily accessible to the general public;

(8) a person intercepts radio communication that is transmitted:

(A) by a station for the use of the general public;

(B) to ships, aircraft, vehicles, or persons in distress;

(C) by a governmental, law enforcement, civil defense, private land mobile, or public safety communications system that is readily accessible to the general public;

(D) by a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

(E) by a marine or aeronautical communications system;

(9) a person intercepts a wire or electronic communication the transmission of which causes harmful interference to a lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference;

(10) a user of the same frequency intercepts a radio communication made through a system that uses frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted; or

(11) a provider of electronic communications service records the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service towards the completion of the communication, or a user of that service from fraudulent, unlawful, or abusive use of the service.

(d)(1) A ~~[Except as provided by Subsection (e) of this section, a]~~ person commits an offense if he:

(A) intentionally manufactures, assembles, possesses, or sells an electronic, mechanical, or other device knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications and that the device or a component of the device has been or will be used for an unlawful purpose; or

(B) places in a newspaper, magazine, handbill, or other publication an advertisement of an electronic, mechanical, or other device:

(i) knowing or having reason to know that the device is designed primarily for nonconsensual interception of wire, electronic, or oral communications;

(ii) promoting the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications; or

(iii) knowing or having reason to know that the advertisement will promote the use of the device for the purpose of nonconsensual interception of wire, electronic, or oral communications.

(2) An offense under Subdivision (1) ~~[of this subsection] is a state jail felony [punishable by confinement in the Texas Department of Corrections for a term of not more than five years or a fine of not more than \$10,000, or both].~~

(e) It is an *affirmative defense to prosecution under* ~~[exception to the application of] Subsection (d) [of this section]~~ that the manufacture, assembly, possession, or sale of an electronic, mechanical, or other device that is designed primarily for the purpose of nonconsensual interception of wire, electronic, or oral communication is by:

(1) a communication common carrier or a provider of wire or electronic communications service or an officer, agent, or employee of or a person under contract with a communication common carrier or provider acting in the normal course of the provider's or communication carrier's business;

(2) an officer, agent, or employee of a person under contract with, bidding on contracts with, or doing business with the United States or this state acting in the normal course of the activities of the United States or this state; or

(3) a law enforcement agency that has an established unit specifically designated to respond to and deal with life-threatening situations or specifically trained to install wire, oral, or electronic communications intercept equipment.

(f) Except as provided by Subsections (d) and (h) ~~[(i) of this section]~~, an offense under this section is a felony of the second degree.

(g) ~~[Property seized pursuant to this section may be forfeited to the Department of Public Safety in the manner provided by Article 18.18, Code of Criminal Procedure, for disposition of seized property. The department may destroy the property or maintain, repair, use, and operate the property in a manner consistent with Article 18.20, Code of Criminal Procedure.]~~

~~[(h)]~~ For purposes of this section:

(1) An immediate life-threatening situation exists when human life is directly threatened in either a hostage or barricade situation.

(2) "Member of a law enforcement unit specially trained to respond to and deal with life-threatening situations" means a peace officer who has received a minimum of 40 hours a year of training in hostage and barricade suspect situations. This training must be evidenced by the submission of appropriate documentation to the Commission on Law Enforcement Officer Standards and Education.

(h) ~~[(4)]~~(1) A person commits an offense if, knowing that a government attorney or an investigative or law enforcement officer has been authorized or has applied for authorization to intercept wire, electronic, or oral communications, the person obstructs, impedes, prevents, gives notice to another of, or attempts to give notice to another of the interception.

(2) An offense under this subsection is a *state jail felony* ~~[punishable by confinement in the Texas Department of Corrections for a term of not more than five years or by a fine of not more than \$10,000, or both].~~

(i) *This section expires September 1, 2005, and shall not be in force on and after that date.*

~~[Sec. 16.021. ILLEGAL INTERCEPTION. (a) In this section, "communication" and "interception" have the same meanings as are given those terms in Section 123.001, Civil Practice and Remedies Code.~~

~~[(b) A person, including a landlord, building operator, or employee of a communication common carrier, commits an offense if the person knowingly aids in or permits an interception or attempted interception.~~

~~[(c) It is a defense to prosecution under this section that the interception is authorized by state or federal law.~~

~~[(d) An offense under this section is a Class A misdemeanor, unless the actor has been previously convicted under this section, in which event the offense is a felony of the third degree.]~~

Sec. 16.03. UNLAWFUL USE OF PEN REGISTER OR TRAP AND TRACE DEVICE.

(a) Except as authorized by a court order obtained under Article 18.21, Code of Criminal Procedure, or in an emergency under the circumstances described and permitted under that article, a person commits an offense if he knowingly installs or utilizes a pen register or trap and trace device to record telephone numbers dialed from or to a telephone instrument.

(b) In this section, "authorized peace officer," "communications common carrier," "pen register," and "trap and trace device" have the meanings assigned by Article 18.21, Code of Criminal Procedure.

(c) It is an exception to the application of Subsection (a) ~~[of this section]~~ that an officer, employee, or agent of a communications common carrier~~, as defined by Article 18.21, Code of Criminal Procedure]~~ installs or utilizes a device or equipment to record the numbers dialed from or to a telephone instrument in the normal course of business of the carrier, for the protection of property or services provided by the carrier, or assists an authorized peace officer in executing an order issued under Article 18.21, Code of Criminal Procedure.

(d) It is an exception to the application of Subsection (a) ~~[of this section]~~ that the installation or utilization of a pen register or trap and trace device was made by an officer, agent, or employee of a lawful enterprise while engaged in an activity that is a necessary incident to the rendition of service or to the protection of property or services provided by the enterprise, and was not made for the purpose of gathering information for a law enforcement agency or private investigative agency, other than information related to the theft of communication or information services provided by the enterprise.

(e) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

~~[(f) A pen register or trap and trace device used in violation of this section is subject to seizure and may be forfeited to the Department of Public Safety in the manner provided for disposition of seized property by Article 18.18, Code of Criminal Procedure.]~~

Sec. 16.04. UNLAWFUL ACCESS TO STORED COMMUNICATIONS. (a) In this section, "electronic communication," "electronic storage," "user," and "wire communication" have the meanings assigned to those terms in Article 18.21, Code of Criminal Procedure.

(b) A person commits an offense if the person obtains, alters, or prevents authorized access to a wire or electronic communication while the communication is in electronic storage by:

- (1) intentionally obtaining access without authorization to a facility through which a wire or electronic communications service is provided; or
- (2) intentionally exceeding an authorization for access to a facility through which a wire or electronic communications service is provided.

(c) Except as provided by Subsection (d) ~~[of this section]~~, an offense under Subsection (b) ~~[of this section]~~ is a Class A misdemeanor.

(d) ~~If committed to obtain a benefit or to harm another [for purposes of commercial advantage, malicious destruction or damage, or private commercial gain], an offense is a state jail felony [of the third degree]. [The amount of a fine that may be imposed for an offense punished under this subsection, including an offense punishable under this subsection but subject to enhanced penalties, may be in any amount not to exceed \$250,000.]~~

(e) It is an exception to the application of Subsection (b) ~~[of this section]~~ that the conduct was authorized by:

- (1) the provider of the wire or electronic communications service;
- (2) the user of the wire or electronic communications service; or
- (3) Article 18.21, Code of Criminal Procedure.

Sec. 16.05. **ILLEGAL DIVULGENCE OF PUBLIC COMMUNICATIONS.** (a) In this section, "electronic communication," "electronic communications service," and "electronic communications system" have the meanings given those terms in Article 18.20, Code of Criminal Procedure.

(b) Except as provided by Subsection (c) ~~[of this section]~~, a person who provides electronic communications service to the public commits an offense if he intentionally divulges the contents of a communication, other than a communication to that person or that person's agent, while the communication is in transmission on that service, to any person other than the addressee or the intended recipient of the communication or the addressee's or intended recipient's agent.

(c) A person who provides electronic communications service to the public may divulge the contents of a communication:

- (1) as authorized by federal or state law;
- (2) to a person employed, authorized, or whose facilities are used to forward the communication to the communication's destination; or
- (3) to a law enforcement agency if the contents were obtained by the service provider and the contents appear to pertain to the commission of a crime.

(d) Except as provided by Subsections (e) and (f) ~~[of this section]~~, an offense under Subsection (b) ~~[of this section]~~ is a *state jail felony* ~~[punishable by confinement in the Texas Department of Corrections for a term of not more than five years or a fine not to exceed \$10,000, or both]~~.

(e) If committed for a tortious or illegal purpose ~~or to gain a benefit~~, ~~or for direct or indirect commercial advantage or private commercial gain~~, an offense under Subsection (b) ~~[of this section]~~ that involves a radio communication that is not scrambled or encrypted:

- (1) is a Class A misdemeanor if the communication is not the radio portion of a cellular telephone communication, a public land mobile radio service communication, or a paging service communication; or
- (2) is a *Class C misdemeanor* ~~[punishable by a fine of not more than \$500]~~ if the communication is the radio portion of a cellular telephone communication, a public and mobile radio service or communication or a paging service communication.

(f)(1) A person who engages in conduct constituting an offense under Subsection (b) ~~[of this section]~~ that is not for a tortious or illegal purpose or for the purpose of direct or indirect commercial advantage or private commercial gain and involves a radio communication that is transmitted on frequencies allocated under Subpart D or Part 74 of the rules of the Federal Communications Commission and that is not scrambled or encrypted shall be subject to suit by the federal or state government in a court of competent jurisdiction for appropriate injunctive relief. If it is shown on the trial of the civil suit that the defendant has been convicted of an offense under Subsection (b) or that the defendant has been found liable in a civil action under Article 18.20, Code of Criminal Procedure, in addition to granting injunctive relief the court shall impose a civil penalty of \$500 on the defendant.

(2) A court may use any means within the court's authority to enforce an injunction issued under Subdivision (1) ~~[(2) of this subsection]~~ and shall impose a fine as for contempt of court of not less than \$500 for each violation of the injunction.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 19. CRIMINAL HOMICIDE

Sec. 19.01. **TYPES OF CRIMINAL HOMICIDE.** (a) A person commits criminal homicide if he intentionally, knowingly, recklessly, or with criminal negligence causes the death of an individual.

(b) Criminal homicide is murder, capital murder, ~~[voluntary manslaughter, involuntary]~~ manslaughter, or criminally negligent homicide.

Sec. 19.02. MURDER. (a) *In this section:*

(1) *"Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.*

(2) *"Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.*

(b) A person commits an offense if he:

(1) intentionally or knowingly causes the death of an individual;

(2) intends to cause serious bodily injury and commits an act clearly dangerous to human life that causes the death of an individual; or

(3) commits or attempts to commit a felony, other than ~~[voluntary or involuntary]~~ manslaughter, and in the course of and in furtherance of the commission or attempt, or in immediate flight from the commission or attempt, he commits or attempts to commit an act clearly dangerous to human life that causes the death of an individual.

(c) *Except as provided by Subsection (d), an ~~[(b)-An]~~ offense under this section is a felony of the first degree.*

(d) *At the punishment stage of a trial, the defendant may raise the issue as to whether he caused the death under the immediate influence of sudden passion arising from an adequate cause. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.*

Sec. 19.03. CAPITAL MURDER. (a) A person commits an offense if he commits murder as defined under Section 19.02(b)(1) ~~[19.02(a)(1) of this code]~~ and:

(1) the person murders a peace officer or fireman who is acting in the lawful discharge of an official duty and who the person knows is a peace officer or fireman;

(2) the person intentionally commits the murder in the course of committing or attempting to commit kidnapping, burglary, robbery, aggravated sexual assault, ~~[or]~~ arson, or obstruction or retaliation;

(3) the person commits the murder for remuneration or the promise of remuneration or employs another to commit the murder for remuneration or the promise of remuneration;

(4) the person commits the murder while escaping or attempting to escape from a penal institution;

(5) the person, while incarcerated in a penal institution, murders another:

(A) who is employed in the operation of the penal institution; or

(B) with the intent to establish, maintain, or participate in a combination or in the profits of a combination;

(6) the person:

(A) while incarcerated for an offense under this section or Section 19.02, murders another; or

(B) while serving a sentence of life imprisonment or a term of 99 years for an offense under Section 20.04, 22.021, or 29.03, murders another;

(7) the person murders more than one person:

(A) during the same criminal transaction; or

(B) during different criminal transactions but the murders are committed pursuant to the same scheme or course of conduct; or

(8) the person murders an individual under six years of age.

(b) An offense under this section is a capital felony.

(c) If the jury or, when authorized by law, the judge does not find beyond a reasonable doubt that the defendant is guilty of an offense under this section, he may be convicted of murder or of any other lesser included offense.

Sec. 19.04. ~~[VOLUNTARY MANSLAUGHTER. (a) A person commits an offense if he causes the death of an individual under circumstances that would constitute murder under Section 19.02 of this code, except that he caused the death under the immediate influence of sudden passion arising from an adequate cause.~~

~~[(b) "Sudden passion" means passion directly caused by and arising out of provocation by the individual killed or another acting with the person killed which passion arises at the time of the offense and is not solely the result of former provocation.~~

~~[(c) "Adequate cause" means cause that would commonly produce a degree of anger, rage, resentment, or terror in a person of ordinary temper, sufficient to render the mind incapable of cool reflection.~~

~~[(d) An offense under this section is a felony of the second degree.~~

[Sec. 19.05. INVOLUNTARY] MANSLAUGHTER. (a) A person commits an offense if he[
 he[

[(1)] recklessly causes the death of an individual[; or

[(2)] by accident or mistake when operating a motor vehicle, airplane, helicopter, or boat while intoxicated and, by reason of such intoxication, causes the death of an individual.

[(b) For purposes of this section, "intoxicated" has the meaning assigned that term by Subsection (a), Article 6701-1, Revised Statutes].

(b) [(c)] An offense under this section is a felony of the *second* [third] degree.

[Sec. 19.06. EVIDENCE. (a) In all prosecutions for murder or voluntary manslaughter, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

[(b) In a prosecution for murder or manslaughter, if a defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33 of this code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:

[(1)] relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.01, Family Code; and

[(2)] relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion.]

Sec. 19.05 [19.07]. CRIMINALLY NEGLIGENT HOMICIDE. (a) A person commits an offense if he causes the death of an individual by criminal negligence.

(b) An offense under this section is a *state jail felony* [Class A misdemeanor].

CHAPTER 20. KIDNAPPING AND FALSE IMPRISONMENT

Sec. 20.01. DEFINITIONS. In this chapter:

(1) "Restrain" means to restrict a person's movements without consent, so as to interfere substantially with his liberty, by moving him from one place to another or by confining him. Restraint is "without consent" if it is accomplished by:

(A) force, intimidation, or deception; or

(B) any means, including acquiescence of the victim, if he is a child less than 14 years of age or an incompetent person and the parent, guardian, or person or institution acting in loco parentis has not acquiesced in the movement or confinement.

(2) "Abduct" means to restrain a person with intent to prevent his liberation by:

(A) secreting or holding him in a place where he is not likely to be found; or

(B) using or threatening to use deadly force.

(3) "Relative" means a parent or stepparent, ancestor, sibling, or uncle or aunt, including an adoptive relative of the same degree through marriage or adoption.

Sec. 20.02. FALSE IMPRISONMENT. (a) A person commits an offense if he intentionally or knowingly restrains another person.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the person restrained was a child *younger* [less] than 14 years of age;
- (2) the actor was a relative of the child; and
- (3) the actor's sole intent was to assume lawful control of the child.

(c) An offense under this section is a Class B misdemeanor unless the actor recklessly exposes the victim to a substantial risk of serious bodily injury, in which event it is a felony of the third degree.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the abduction was not coupled with intent to use or to threaten to use deadly force;
- (2) the actor was a relative of the person abducted; and
- (3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

Sec. 20.04. AGGRAVATED KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

- (1) hold him for ransom or reward;
- (2) use him as a shield or hostage;
- (3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
- (4) inflict bodily injury on him or violate or abuse him sexually;
- (5) terrorize him or a third person; or
- (6) interfere with the performance of any governmental or political function.

(b) *Except as provided by Subsection (c), an [An] offense under this section is a felony of the first degree [unless the actor voluntarily releases the victim alive and in a safe place, in which event it is a felony of the second degree].*

(c) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

CHAPTER 21. SEXUAL OFFENSES

Sec. 21.01. DEFINITIONS. In this chapter:

(1) "Deviate sexual intercourse" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or

(B) the penetration of the genitals or the anus of another person with an object.

(2) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 21.06. HOMOSEXUAL CONDUCT. (a) A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex.

(b) An offense under this section is a Class C misdemeanor.

Sec. 21.07. PUBLIC LEWDNESS. (a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his ~~act~~:

- (1) ~~an~~ act of sexual intercourse;
- (2) ~~an~~ act of deviate sexual intercourse;
- (3) ~~an~~ act of sexual contact; or
- (4) ~~an~~ act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.

(b) An offense under this section is a Class A misdemeanor.

Sec. 21.08. INDECENT EXPOSURE. (a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any person, and he is reckless about whether another is present who will be offended or alarmed by his act.

(b) An offense under this section is a Class B misdemeanor.

Sec. 21.11. INDECENCY WITH A CHILD. (a) A person commits an offense if, with a child younger than 17 years and not his spouse, whether the child is of the same or opposite sex, he:

- (1) engages in sexual contact with the child; or
- (2) exposes his anus or any part of his genitals, knowing the child is present, with intent to arouse or gratify the sexual desire of any person.

(b) ~~It is a defense to prosecution under this section that the child was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in:~~

- ~~[(1) sexual intercourse;~~
- ~~[(2) deviate sexual intercourse;~~
- ~~[(3) sexual contact; or~~
- ~~[(4) indecent exposure as defined in Subsection (a)(2) of this section.~~

~~[(c)]~~ It is an affirmative defense to prosecution under this section that the actor:

- (1) was not more than *three* ~~two~~ years older than the victim and of the opposite sex; and
- (2) did not use duress, force, or a threat against the victim at the time of the offense.

(c) ~~[(d)]~~ An offense under Subsection (a)(1) ~~[of this section]~~ is a felony of the second degree and an offense under Subsection (a)(2) ~~[of this section]~~ is a felony of the third degree.

CHAPTER 22. ASSAULTIVE OFFENSES

Sec. 22.01. ASSAULT. (a) A person commits an offense if the person:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse; ~~or~~
- (2) intentionally or knowingly threatens another with imminent bodily injury, including the person's spouse; or
- (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.

(b) An offense under Subsection (a)(1) ~~[of this section]~~ is a Class A misdemeanor ~~[unless:~~

~~[(1) the offense is committed by the owner or an employee of an institution described in Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that section, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that section, in which event the offense is a felony of the third degree;~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by causing bodily injury to a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, in which event the offense is a felony of the third degree; or~~

~~[(3) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member two or more times, in which event the offense is a felony of the third degree].~~

(c) An offense under Subsection (a)(2) or (3) ~~[of this section]~~ is a Class C misdemeanor unless:

~~[(1) the offense is committed by the owner or an employee of an institution described in Section 242.002(6), Health and Safety Code, or a person providing medical or psychiatric treatment at an institution described in that section, and the offense is committed by threatening a patient or resident of an institution described in that section with bodily injury, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in Section 242.003(a)(6), Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the Texas Department of Corrections, described in that section with bodily injury, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed by the owner or an employee of a facility, except a facility operated by the Texas Youth Commission or the institutional division of the Texas Department of Criminal Justice, described in Section 242.002, Health and Safety Code, or a person providing medical or psychiatric treatment at a facility, except a facility operated by the Texas Youth Commission or the institutional division, described in that section, and the offense is committed by threatening a patient or resident of a facility, except a facility operated by the Texas Youth Commission or the institutional division, described in that section with bodily injury, in which event the offense is a Class B misdemeanor;~~

~~[(3) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency, other than the Windham Schools, while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor; or~~

~~[(4) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member;~~

~~[(A) one time, in which event the offense is a Class B misdemeanor;~~

~~[(B) two times, in which event the offense is a Class A misdemeanor; or~~

~~[(C) more than two times, in which event the offense is a felony of the third degree.~~

~~[(d) An offense under Subsection (a)(3) of this section is a Class C misdemeanor unless:~~

~~[(1) the offense is committed against a classroom teacher, counselor, principal, or other similar instructional or administrative employee of a primary or secondary school accredited by the Texas Education Agency while engaged in performing his educational duties, in which event the offense is a Class B misdemeanor; or~~

~~[(2) the offense is committed against a family member and the actor has been previously convicted under this section for an offense against a family member;~~

~~[(A) one time, in which event the offense is a Class B misdemeanor;~~

~~[(B) two times, in which event the offense is a Class A misdemeanor; or~~

~~[(C) more than two times, in which event the offense is a felony of the third degree.~~

~~[(e) In this section, "family" has the meaning assigned by Section 71.01, Family Code].~~

Sec. 22.011. SEXUAL ASSAULT. (a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or female sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) ~~[of this section]~~ is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge; ~~[or]~~

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat; or

(8) *the actor is a public servant who coerces the other person to submit or participate.*

(c) In this section:

(1) "Child" means a person younger than 17 years of age who is not the spouse of the actor.

(2) "Spouse" means a person who is legally married to another, except that persons married to each other are not treated as spouses if they do not reside together or if there is an action pending between them for dissolution of the marriage or for separate maintenance.

(d) It is a defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that:

~~[(1) the child was at the time of the offense 14 years of age or older and had prior to the time of the offense engaged promiscuously in conduct described in that subsection; or~~

~~[(2)] the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.~~

(e) It is an affirmative defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that the actor was not more than *three* ~~[two]~~ years older than the victim, *and the victim was a child of 14 years of age or older.*

(f) An offense under this section is a felony of the second degree.

~~[(g) A prosecution against a spouse under this section requires a showing of bodily injury or the threat of bodily injury.]~~

~~[Sec. 22.012. INTENTIONALLY EXPOSING ANOTHER TO AIDS OR HIV. (a) A person commits an offense if the person, knowing that he or she has AIDS or is a carrier of HIV and with intent to cause serious bodily injury or death, intentionally engages in conduct reasonably likely to result in the transfer of the actor's own blood, bodily fluids containing visible blood, semen, or vaginal secretions into the bloodstream of another, or through the other person's skin or other membrane, except during in utero transmission of blood or bodily fluids, and:~~

~~[(1) the other person did not consent to the transfer of blood, bodily fluids containing blood, semen, or vaginal secretions; or~~

~~[(2) the other person consented to the transfer but at the time of giving consent had not been informed by the actor that the actor had AIDS or was a carrier of HIV.]~~

~~[(b) In this section, "AIDS" and "HIV" have the meanings assigned by Section 81.101, Health and Safety Code.]~~

~~[(c) An offense under this section is a felony of the third degree.]~~

Sec. 22.02. AGGRAVATED ASSAULT. (a) A person commits an offense if the person commits assault as defined in Section 22.01 ~~[of this code]~~ and the person:

(1) causes serious bodily injury to another, including the person's spouse; or

(2) ~~[threatens with a deadly weapon or threatens to cause bodily injury or causes bodily injury to a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the pardons and paroles division of the Texas Department of Criminal Justice, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee of a municipal or county jail, the institutional division of the Texas Department of Criminal Justice, or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code or Chapter 495, Government Code, when the person knows or has been informed the person assaulted is a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the pardons and paroles division, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee;~~

~~[(A) while the member of the Board of Pardons and Paroles or Texas Board of Criminal Justice, employee of the pardons and paroles division, employee of the Windham Schools, peace officer, jailer, guard, or other employee is lawfully discharging an official duty; or~~

~~[(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a member of the Board of Pardons and Paroles or Texas Board of Criminal Justice, an employee of the pardons and paroles division, an employee of the Windham Schools, a peace officer, or a jailer, guard, or other employee; or~~

~~[(3) causes bodily injury to a participant in a court proceeding when the person knows or has been informed the person assaulted is a participant in a court proceeding;~~

~~[(A) while the injured person is lawfully discharging an official duty; or~~

~~[(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding; or~~

~~[(4)] uses or exhibits a deadly weapon during the commission of the assault.~~

(b) ~~[The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.]~~

(c) An offense under this section is a felony of the *second* ~~[third]~~ degree, *except that* ~~[unless the offense is committed under Subdivision (2) of Subsection (a) of this section and the person uses a deadly weapon, in which event] the offense is a felony of the first degree if the offense is committed:~~

- (1) by a public servant acting under color of the servant's office or employment;
 - (2) against a person the actor knows is a public servant while the public servant is lawfully discharging an official duty, or in retaliation or on account of an exercise of official power or performance of an official duty as a public servant; or
 - (3) in retaliation against or on account of the service of another as a witness, prospective witness, informant, or person who has reported the occurrence of a crime.
- (c) The actor is presumed to have known the person assaulted was a public servant if the person was wearing a distinctive uniform or badge indicating the person's employment as a public servant.

~~[(d) A person commits an offense if the person commits assault as defined in Section 22.01 of this code and the person threatens with a deadly weapon or causes serious bodily injury to an officer employed by a community supervision and corrections department, an employee of a community corrections facility operated by or for a community supervision and corrections department and listed in Section 6, Article 42.13, Code of Criminal Procedure, a juvenile probation officer, or an employee of a juvenile probation department or a juvenile detention center;~~

~~[(1) while the officer or employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee.]~~

Sec. 22.021. AGGRAVATED SEXUAL ASSAULT. (a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or female sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person; ~~[or]~~

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode; or

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(B) the victim is younger than 14 years of age.

(b) In this section, "child" has the meaning assigned that term by Section 22.011(c) ~~[of this code]~~.

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b) ~~[of this code]~~.

(d) ~~[The defense provided by Section 22.011(d)(1) of this code and the affirmative defense provided by Section 22.011(e) of this code do not apply to this section.]~~ The defense provided by Section 22.011(d) ~~applies~~ ~~[(d)(2) of this section does apply]~~ to this section.

(e) An offense under this section is a felony of the first degree.

~~[Sec. 22.03. DEADLY ASSAULT ON LAW ENFORCEMENT OR CORRECTIONS OFFICER, MEMBER OR EMPLOYEE OF BOARD OF PARDONS AND PAROLES, COURT PARTICIPANT, PROBATION PERSONNEL, OR EMPLOYEE OF TEXAS YOUTH COMMISSION. (a) A person commits an offense if, with a deadly weapon, he intentionally or knowingly causes serious bodily injury:~~

~~[(1) to a peace officer, a jailer, a guard, or other employee of a municipal or county jail, the institutional division of the Texas Department of Criminal Justice, or a correctional facility authorized by Subchapter F, Chapter 351, Local Government Code, or Chapter 495, Government Code, a member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, an employee of the Windham Schools, or an employee of the pardons and paroles division of the Texas Department of Criminal Justice, where he knows or has been informed the person assaulted is a peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, employee of the Windham Schools, or employee of the pardons and paroles division;~~

~~[(A) while the peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, or employee of the pardons and paroles division is acting in the lawful discharge of an official duty; or~~

~~[(B) in retaliation for or on account of an exercise of official power or performance of an official duty as a peace officer, jailer, guard, other employee, member of the Board of Pardons and Paroles or the Texas Board of Criminal Justice, employee of the Windham Schools, or employee of the pardons and paroles division; or~~

~~[(2) to a participant in a court proceeding when he knows or has been informed that the person assaulted is a participant in a court proceeding;~~

~~[(A) while the injured person is in the lawful discharge of official duty; or~~

~~[(B) in retaliation for or on account of the injured person's having exercised an official power or performed an official duty as a participant in a court proceeding.~~

~~[(b) The actor is presumed to have known the person assaulted was a peace officer if he was wearing a distinctive uniform indicating his employment as a peace officer.~~

~~[(e) An offense under this section is a felony of the first degree.~~

~~[(d) A person commits an offense if, with a deadly weapon, the person intentionally or knowingly causes serious bodily injury to an officer employed by a community supervision and corrections department, an employee of a community corrections facility operated by or for a community supervision and corrections department and listed in Section 6, Article 42.13, Code of Criminal Procedure, a juvenile probation officer, or an employee of a juvenile probation department or a juvenile detention center;~~

~~[(1) while the officer or employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the officer or employee.~~

~~[(e) A person commits an offense if, with a deadly weapon, the person intentionally or knowingly causes serious bodily injury to an employee of the Texas Youth Commission;~~

~~[(1) while the employee is acting in the lawful discharge of an official duty; or~~

~~[(2) in retaliation for or on account of an exercise of official power or performance of an official duty by the employee.]~~

Sec. 22.04. INJURY TO A CHILD, ELDERLY INDIVIDUAL, OR *DISABLED INDIVIDUAL* [INVALID]. (a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or intentionally, knowingly, or recklessly by omission, causes to a child, elderly individual, or *disabled* [invalid] individual:

- (1) serious bodily injury;
- (2) serious [physical or] mental deficiency, [or] impairment, or injury; or
- (3) [disfigurement or deformity; or
- [4)] bodily injury.

(b) An omission that causes a condition described by Subsections (a)(1) through (a)(3) [(a)(4) of this section] is conduct constituting an offense under this section if:

- (1) the actor has a legal or statutory duty to act; or
- (2) the actor has assumed care, custody, or control of a child, elderly individual, or *disabled* [invalid] individual.

(c) In this section:

- (1) "Child" means a person 14 years of age or younger.
- (2) "Elderly individual" means a person 65 years of age or older.
- (3) "*Disabled* [Invalid] individual" means a person older than 14 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect himself from harm or to provide food, shelter, or medical care for himself.

(d) The actor has assumed care, custody, or control if he has by act, words, or course of conduct acted so as to cause a reasonable person to conclude that he has accepted responsibility for protection, food, shelter, and medical care for a child, elderly individual, or *disabled* [invalid] individual.

(e) An offense under Subsection (a)(1) or [(2) or (3) of this section] is a felony of the first degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a felony of the *second* [third] degree.

(f) An offense under Subsection (a)(3) [(a)(4) of this section] is a felony of the third degree when the conduct is committed intentionally or knowingly. When the conduct is engaged in recklessly it shall be a *state jail felony* [Class A misdemeanor].

(g) An offense under Subsection (a) [of this section] when the person acts with criminal negligence shall be a *state jail felony* [Class A misdemeanor].

(h) A person who is subject to prosecution under both this section and another section of this code may be prosecuted under either or both sections. Section 3.04 [of this code] does not apply to criminal episodes prosecuted under both this section and another section of this code. If a criminal episode is prosecuted under both this section and another section of this code and sentences are assessed for convictions under both sections, the sentences shall run concurrently.

(i) It is an affirmative defense to prosecution under Subsection (b)(2) [of this section] that before the offense the actor:

- (1) notified in person the child, elderly individual, or *disabled* [invalid] individual that he would no longer provide any of the care described by Subsection (d) [of this section]; and
- (2) notified in writing the parents or person other than himself acting in loco parentis to the child, elderly individual, or *disabled* [invalid] individual that he would no longer provide any of the care described by Subsection (d) [of this section]; or
- (3) notified in writing the Texas Department of Human Services that he would no longer provide any of the care set forth in Subsection (d) [of this section].

(j) Written notification under Subsection (i)(2) or (i)(3) [of this section] is not effective unless it contains the name and address of the actor, the name and address of the child, elderly individual, or *disabled* [invalid] individual, the type of care provided by the actor, and the date the care was discontinued.

(k)(1) It is a defense to prosecution under this section that the act or omission consisted of:

(A) reasonable medical care occurring under the direction of or by a licensed physician; or

(B) emergency medical care administered in good faith and with reasonable care by a person not licensed in the healing arts.

(2) It is an affirmative defense to prosecution under this section that the act or omission was based on treatment in accordance with the tenets and practices of a recognized religious method of healing with a generally accepted record of efficacy. *It is an affirmative defense to prosecution for a person charged with an act of omission under this section causing to a child, elderly individual, or disabled individual a condition described by Subsection (a)(1), (2), or (3) that:*

(A) there is no evidence that, on the date prior to the offense charged, the defendant was aware of an incident of injury to the child, elderly individual, or disabled individual and failed to report the incident; and

(B) the person:

(i) was a victim of family violence, as that term is defined by Section 71.01, Family Code, committed by a person who is also charged with an offense against the child, elderly individual, or disabled individual under this section or any other section of this title;

(ii) did not cause a condition described by Subsection (a)(1), (2), or (3); and

(iii) did not reasonably believe at the time of the omission that an effort to prevent the person also charged with an offense against the child, elderly individual, or disabled individual from committing the offense would have an effect.

Sec. 22.041. ABANDONING OR ENDANGERING CHILD. (a) In this section, "abandon" means to leave a child in any place without providing reasonable and necessary care for the child, under circumstances under which no reasonable, similarly situated adult would leave a child of that age and ability.

(b) A person commits an offense if, having custody, care, or control of a child younger than 15 years, he intentionally abandons the child in any place under circumstances that expose the child to an unreasonable risk of harm.

(c) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that places a child younger than 15 years in imminent danger of death, bodily injury, or physical or mental impairment.

(d) Except as provided by Subsection (e) [~~of this section~~], an offense under Subsection (b) [~~of this section~~] is:

(1) a *state jail felony* [~~Class A misdemeanor~~] if the actor abandoned the child with intent to return for the child; or

(2) a felony of the third degree if the actor abandoned the child without intent to return for the child.

(e) An offense under Subsection (b) [~~of this section~~] is a felony of the second degree if the actor abandons the child under circumstances that a reasonable person would believe would place the child in imminent danger of death, bodily injury, or physical or mental impairment.

(f) An offense under Subsection (c) [~~of this section~~] is a *state jail felony* [~~Class A misdemeanor~~].

Sec. 22.05. DEADLY [~~RECKLESS~~] CONDUCT. (a) A person commits an offense if he recklessly engages in conduct that places another in imminent danger of serious bodily injury.

(b) A person commits an offense if he knowingly discharges a firearm at or in the direction of:

(1) one or more individuals; or

(2) a habitation, building, or vehicle and is reckless as to whether the habitation, building, or vehicle is occupied.

(c) Recklessness and danger are presumed if the actor knowingly pointed a firearm at or in the direction of another whether or not the actor believed the firearm to be loaded.

(d) *For purposes of this section, "building," "habitation," and "vehicle" have the meanings assigned those terms by Section 90.01.*

(e) ~~[(e)]~~ An offense under Subsection (a) ~~[this section]~~ is a Class A ~~[B]~~ misdemeanor. *An offense under Subsection (b) is a felony of the third degree.*

Sec. 22.06. **CONSENT AS DEFENSE TO ASSAULTIVE CONDUCT.** The victim's effective consent or the actor's reasonable belief that the victim consented to the actor's conduct is a defense to prosecution under Section 22.01 (Assault), 22.02 (Aggravated Assault), or 22.05 (~~Deadly~~ ~~Reckless~~ Conduct) ~~[of this code]~~ if:

- (1) the conduct did not threaten or inflict serious bodily injury; or
- (2) the victim knew the conduct was a risk of:
 - (A) his occupation;
 - (B) recognized medical treatment; or
 - (C) a scientific experiment conducted by recognized methods.

Sec. 22.07. **TERRORISTIC THREAT.** (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:

- (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
- (2) place any person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation or use of a building; room; place of assembly; place to which the public has access; place of employment or occupation; aircraft, automobile, or other form of conveyance; or other public place; or
- (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service.

(b) An offense under Subdivision (1) or (2) of Subsection (a) ~~[of this section]~~ is a Class B misdemeanor. An offense under Subdivision (3) of Subsection (a) ~~[of this section]~~ is a Class A misdemeanor. An offense under Subdivision (4) of Subsection (a) ~~[of this section]~~ is a felony of the third degree.

Sec. 22.08. **AIDING SUICIDE.** (a) A person commits an offense if, with intent to promote or assist the commission of suicide by another, he aids or attempts to aid the other to commit or attempt to commit suicide.

(b) An offense under this section is a Class C misdemeanor unless the actor's conduct causes suicide or attempted suicide that results in serious bodily injury, in which event the offense is a *state jail felony* ~~[of the third degree]~~.

Sec. 22.09. **TAMPERING WITH CONSUMER PRODUCT.** (a) In this section:

(1) "Consumer Product" means any product offered for sale to or for consumption by the public and includes "food" and "drugs" as those terms are defined in Section 431.002, Health and Safety Code.

(2) "Tamper" means to alter or add a foreign substance to a consumer product to make it probable that the consumer product will cause serious bodily injury.

(b) A person commits an offense if he knowingly or intentionally tampers with a consumer product knowing that the consumer product will be offered for sale to the public or as a gift to another.

(c) A person commits an offense if he knowingly or intentionally threatens to tamper with a consumer product with the intent to cause fear, to affect the sale of the consumer product, or to cause bodily injury to any person.

(d) An offense under Subsection (b) ~~[of this section]~~ is a felony of the second degree unless a person suffers serious bodily injury, in which event it is a felony of the first degree. An offense under Subsection (c) ~~[of this section]~~ is a felony of the third degree.

Sec. 22.10. **LEAVING A CHILD IN A VEHICLE.** (a) A person commits an offense if he intentionally or knowingly leaves a child in a motor vehicle for longer than five minutes, knowing that the child is:

- (1) younger than seven years of age; and

- (2) not attended by an individual in the vehicle who is 14 years of age or older.
(b) An offense under this section is a Class C misdemeanor.

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Sec. 25.01. BIGAMY. (a) An individual commits an offense if:

- (1) he is legally married and he:

(A) purports to marry or does marry a person other than his spouse in this state, or any other state or foreign country, under circumstances that would, but for the actor's prior marriage, constitute a marriage; or

(B) lives with a person other than his spouse in this state under the appearance of being married; or

- (2) he knows that a married person other than his spouse is married and he:

(A) purports to marry or does marry that person in this state, or any other state or foreign country, under circumstances that would, but for the person's prior marriage, constitute a marriage; or

(B) lives with that person in this state under the appearance of being married.

(b) For purposes of this section, "under the appearance of being married" means holding out that the parties are married with cohabitation and an intent to be married by either party.

(c) It is a defense to prosecution under Subsection (a)(1) ~~[of this section]~~ that the actor reasonably believed that his marriage was void or had been dissolved by death, divorce, or annulment.

(d) For the purposes of this section, the lawful wife or husband of the actor may testify both for or against the actor concerning proof of the original marriage.

- (e) An offense under this section is a *Class A misdemeanor* ~~[felony of the third degree]~~.

Sec. 25.02. PROHIBITED SEXUAL CONDUCT ~~[INCEST]~~. (a) An individual commits an offense if he engages in sexual intercourse or deviate sexual intercourse with a person he knows to be, without regard to legitimacy:

- (1) his ancestor or descendant by blood or adoption;
(2) his stepchild or stepparent, while the marriage creating that relationship exists;
(3) his parent's brother or sister of the whole or half blood;
(4) his brother or sister of the whole or half blood or by adoption; or
(5) the children of his brother or sister of the whole or half blood or by adoption.

(b) For purposes of this section:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person with intent to arouse or gratify the sexual desire of any person.

(2) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

(c) An offense under this section is a felony of the third degree.

Sec. 25.03. INTERFERENCE WITH CHILD CUSTODY. (a) A person commits an offense if he takes or retains a child younger than 18 years when he:

(1) knows that his taking or retention violates the express terms of a judgment or order of a court disposing of the child's custody; or

(2) has not been awarded custody of the child by a court of competent jurisdiction, knows that a suit for divorce or a civil suit or application for habeas corpus to dispose of the child's custody has been filed, and takes the child out of the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a

statutory county court, without the permission of the court and with the intent to deprive the court of authority over the child.

(b) A noncustodial parent commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices or persuades the child to leave the custody of the custodial parent, guardian, or person standing in the stead of the custodial parent or guardian of the child.

(c) It is a defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that the actor returned the child to the geographic area of the counties composing the judicial district if the court is a district court or the county if the court is a statutory county court, within three days after the date of the commission of the offense.

(d) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

Sec. 25.031. AGREEMENT TO ABDUCT FROM CUSTODY. (a) A person commits an offense if the person agrees, for remuneration or the promise of remuneration, to abduct a child *younger than 18 years of age* by force, threat of force, misrepresentation, stealth, or unlawful entry, knowing that the child is under the care and control of a person having custody or physical possession of the child under a court order or under the care and control of another person who is exercising care and control with the consent of a person having custody or physical possession under a court order.

(b) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

Sec. 25.04. ENTICING A CHILD. (a) A person commits an offense if, with the intent to interfere with the lawful custody of a child younger than 18 years, he knowingly entices, persuades, or takes the child from the custody of the parent or guardian or person standing in the stead of the parent or guardian of such child.

(b) An offense under this section is a Class B misdemeanor.

Sec. 25.05. CRIMINAL NONSUPPORT. (a) An individual commits an offense if he intentionally or knowingly fails to provide support for his child younger than 18 years of age, or for his child who is the subject of a court order requiring the individual to support the child.

(b) For purposes of this section, "child" includes a child born out of wedlock whose paternity has either been acknowledged by the actor or has been established in a civil suit under the Family Code or the law of another state.

(c) Under this section, a conviction may be had on the uncorroborated testimony of a party to the offense.

(d) It is an affirmative defense to prosecution under this section that the actor could not provide support for his child.

(e) The pendency of a prosecution under this section does not affect the power of a court to enter an order for child support under the Family Code.

(f) ~~[Except as provided in Subsection (g) of this section, an offense under this section is a Class A misdemeanor.]~~

~~[(g)] An offense under this section is a state jail felony [of the third degree if the actor:~~

~~[(1) has been convicted one or more times under this section; or~~

~~[(2) commits the offense while residing in another state].~~

Sec. 25.06. ~~[SOLICITATION OF A CHILD. (a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.~~

~~[(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 of this code apply to this section.~~

~~[(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardian of the child, in which event the offense is a felony of the third degree.~~

~~[Sec. 25.07.]~~ HARBORING RUNAWAY CHILD. (a) A person commits an offense if he knowingly harbors a child and he is criminally negligent about whether the child:

(1) is younger than 18 years; and

(2) has escaped from the custody of a peace officer, a probation officer, the Texas Youth Council, or a detention facility for children, or is voluntarily absent from the child's home without the consent of the child's parent or guardian for a substantial length of time or without the intent to return.

(b) It is a defense to prosecution under this section that the actor was related to the child within the second degree by consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(c) It is a defense to prosecution under this section that the actor notified:

(1) the person or agency from which the child escaped or a law enforcement agency of the presence of the child within 24 hours after discovering that the child had escaped from custody; or

(2) a law enforcement agency or a person at the child's home of the presence of the child within 24 hours after discovering that the child was voluntarily absent from home without the consent of the child's parent or guardian.

(d) An offense under this section is a Class A misdemeanor.

(e) On the receipt of a report from a peace officer, probation officer, the Texas Youth Council, a foster home, or a detention facility for children that a child has escaped its custody or upon receipt of a report from a parent, guardian, conservator, or legal custodian that a child is missing, a law enforcement agency shall immediately enter a record of the child into the National Crime Information Center.

Sec. 25.07 [25.08]. VIOLATION OF A PROTECTIVE ORDER. (a) A person commits an offense if, in violation of an order issued under Section 3.581, Section 71.11, or Section 71.12, Family Code, the person knowingly or intentionally:

(1) commits family violence;

(2) directly communicates with a member of the family or household in a threatening or harassing manner, communicates a threat through any person to a member of the family or household, and, if the order prohibits any communication with a member of the family or household, communicates in any manner with the member of the family or household except through the person's attorney or a person appointed by the court; or

(3) goes to or near any of the following places as specifically described in the protective order:

(A) the residence or place of employment or business of a member of the family or household; or

(B) any child care facility, residence, or school where a child protected by the protective order normally resides or attends.

(b) For the purposes of this section, "family violence," "family," "household," and "member of a household" have the meanings assigned by Section 71.01, Family Code.

(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

(d) Reconciliatory actions or agreements made by persons affected by a protective order do not affect the validity of the order or the duty of a peace officer to enforce this section.

(e) A peace officer investigating conduct that may constitute an offense under this section for a violation of a protective order may not arrest a person protected by that order for a violation of that order.

(f) It is not a defense to prosecution under this section that certain information has been excluded, as provided by Section 71.111, Family Code, from an order to which this section applies.

(g) An offense under this section is a Class A misdemeanor. ~~[However, if it is shown at the trial for the offense that the actor has been previously convicted under this section two or more times, the offense is a felony of the third degree.]~~

Sec. 25.08 [25.11]. SALE OR PURCHASE OF CHILD. (a) A person commits an offense if he:

(1) possesses a child *younger than 18 years of age* or has the custody, conservatorship, or guardianship of a child *younger than 18 years of age*, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

(2) offers to give, agrees to give, or gives a thing of value to another for acquiring or maintaining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney or physician for services rendered in the usual course of legal or medical practice; or

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

(c) An offense under this section is a felony of the third degree ~~[unless the actor has been convicted previously under this section, in which event the offense is a felony of the second degree].~~

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 28. ARSON, CRIMINAL MISCHIEF, AND OTHER PROPERTY DAMAGE OR DESTRUCTION

Sec. 28.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any structure or enclosure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Property" means:

(A) real property;

(B) tangible or intangible personal property, including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(4) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation.

(5) "Open-space land" means real property that is undeveloped for the purpose of human habitation.

(6) "Controlled burning" means the burning of unwanted vegetation with the consent of the owner of the property on which the vegetation is located and in such a manner that the fire is controlled and limited to a designated area.

Sec. 28.02. ARSON. (a) A person commits an offense if he starts a fire or causes an explosion with intent to destroy or damage:

(1) any vegetation, fence, or structure on open-space land; or

(2) any building, habitation, or vehicle:

(A) knowing that it is within the limits of an incorporated city or town;

(B) knowing that it is insured against damage or destruction;

- (C) knowing that it is subject to a mortgage or other security interest;
- (D) knowing that it is located on property belonging to another;
- (E) knowing that it has located within it property belonging to another; or
- (F) when he is reckless about whether the burning or explosion will endanger the life of some individual or the safety of the property of another.

(b) It is an exception to the application of Subsection (a)(1) ~~[of this section]~~ that the fire or explosion was a part of the controlled burning of open-space land.

(c) It is a defense to prosecution under Subsection (a)(2)(A) ~~[of this section]~~ that prior to starting the fire or causing the explosion, the actor obtained a permit or other written authorization granted in accordance with a city ordinance, if any, regulating fires and explosions.

(d) An offense under this section is a felony of the second degree, unless bodily injury or death is suffered by any person by reason of the commission of the offense, in which event it is a felony of the first degree.

Sec. 28.03. CRIMINAL MISCHIEF. (a) A person commits an offense if, without the effective consent of the owner:

- (1) he intentionally or knowingly damages or destroys the tangible property of the owner;
- (2) he intentionally or knowingly tampers with the tangible property of the owner and causes pecuniary loss or substantial inconvenience to the owner or a third person; or
- (3) he intentionally or knowingly makes markings, including inscriptions, slogans, drawings, or paintings, on the tangible property of the owner.

(b) Except as provided by Subsection (f), an offense under this section is:

- (1) a Class C misdemeanor if:
 - (A) the amount of pecuniary loss is less than \$20; or
 - (B) except as provided in Subdivision (3) ~~[(4)](B) [of this subsection]~~, it causes substantial inconvenience to others;
- (2) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500 ~~[\$200]~~;
- (3) a Class A misdemeanor if the amount of pecuniary loss is:
 - (A) \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~; or
 - (B) *less than \$1,500 and the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public communications, public water, gas, or power supply;*
- (4) a state jail felony ~~[of the third degree]~~ if:
 - ~~[(A)]~~ the amount of pecuniary loss is \$1,500 ~~[\$750]~~ or more but less than \$20,000;
 - ~~[(B)]~~ *regardless of the amount of pecuniary loss, the actor causes in whole or in part impairment or interruption of public communications, public transportation, public water, gas, or power supply, or other public service, or diverts, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for such purpose, any public communications, public water, gas, or power supply;*
 - ~~[(C)]~~ *regardless of the amount of pecuniary loss, the property is one or more head of cattle, horses, sheep, swine, or goats;*
 - ~~[(D)]~~ *regardless of the amount of pecuniary loss, the property was a fence used for the production of cattle, horses, sheep, swine, or goats; or*
 - ~~[(E)]~~ *regardless of the amount of pecuniary loss, the damage or destruction was inflicted by branding one or more head of cattle, horses, sheep, swine, or goats.]*
- (5) a felony of the third ~~[second]~~ degree if the amount of the pecuniary loss is \$20,000 or more but less than \$100,000;

(6) *a felony of the second degree if the amount of pecuniary loss is \$100,000 or more but less than \$200,000; or*

(7) *a felony of the first degree if the amount of pecuniary loss is \$200,000 or more.*

(c) For the purposes of this section, it shall be presumed that a person ~~(in whose name public communications, public water, gas, or power supply is or was last billed and)~~ who is receiving the economic benefit of *public communications, public water, gas, or power* ~~[said communication or]~~ supply, has knowingly tampered with the tangible property of the owner if the communication or supply has been:

(1) diverted from passing through a metering device; or

(2) prevented from being correctly registered by a metering device; or

(3) activated by any device installed to obtain public communications, public water, gas, or power supply without a metering device.

(d) The term "public communication, public transportation, public water, gas, or power supply, or other public service" shall mean, refer to, and include any such services subject to regulation by the Public Utility Commission of Texas, the Railroad Commission of Texas, or the Texas Water Commission or any such services enfranchised by the State of Texas or any political subdivision thereof.

(e) When more than one item of tangible property, belonging to one or more owners, is damaged, destroyed, or tampered with in violation of this section pursuant to one scheme or continuing course of conduct, the conduct may be considered as one offense, and the amounts of pecuniary loss to property resulting from the damage to, destruction of, or tampering with the property may be aggregated in determining the grade of the offense.

(f) An offense under this section is:

~~[(1)] a state jail felony [of the third degree] if the damage or destruction is inflicted on a place of worship or human burial, a public monument, or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is [\$20 or more but] less than \$20,000; or~~

~~[(2)] a felony of the second degree if the damage or destruction is inflicted on a place of worship or a community center that provides medical, social, or educational programs and the amount of the pecuniary loss to real property or to tangible personal property is \$20,000 or more.~~

Sec. 28.04. RECKLESS DAMAGE OR DESTRUCTION. (a) A person commits an offense if, without the effective consent of the owner, he recklessly damages or destroys property of the owner.

(b) An offense under this section is a Class C misdemeanor.

Sec. 28.05. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property damaged or destroyed if another person also has an interest that the actor is not entitled to infringe.

Sec. 28.06. AMOUNT OF PECUNIARY LOSS. (a) The amount of pecuniary loss under this chapter, if the property is destroyed, is:

(1) the fair market value of the property at the time and place of the destruction; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the destruction.

(b) The amount of pecuniary loss under this chapter, if the property is damaged, is the cost of repairing or restoring the damaged property within a reasonable time after the damage occurred.

(c) The amount of pecuniary loss under this chapter for documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of the destruction or damage if the document is other than evidence of a debt.

(d) If the amount of pecuniary loss cannot be ascertained by the criteria set forth in Subsections (a) through (c) ~~[of this section]~~, the amount of loss is deemed to be greater than \$500 ~~[\$200]~~ but less than \$1,500 ~~[\$750]~~.

(e) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property involved, the value of the interest so proven shall be deducted from:

(1) the amount of pecuniary loss if the property is destroyed; or

(2) the amount of pecuniary loss to the extent of an amount equal to the ratio the value of the interest bears to the total value of the property, if the property is damaged.

Sec. 28.07. INTERFERENCE WITH RAILROAD PROPERTY. (a) In this section:

(1) "Railroad property" means:

(A) a train, locomotive, railroad car, caboose, work equipment, rolling stock, safety device, switch, or connection that is owned, leased, operated, or possessed by a railroad; or

(B) a railroad track, rail, bridge, trestle, or right-of-way owned or used by a railroad.

(2) "Tamper" means to move, alter, or interfere with railroad property.

(b) A person commits an offense if the person:

(1) throws an object or discharges a firearm or weapon at a train or rail-mounted work equipment; or

(2) without the effective consent of the owner:

(A) enters or remains on railroad property, knowing that it is railroad property;

(B) tampers with railroad property;

(C) places an obstruction on a railroad track or right-of-way; or

(D) causes in any manner the derailment of a train, railroad car, or other railroad property that moves on tracks.

(c) An offense under Subsection (b)(1) ~~[of this section]~~ is a Class B misdemeanor unless the person causes bodily injury to another, in which event the offense is a felony of the third degree.

(d) An offense under Subsection (b)(2)(A) ~~[of this section]~~ is a Class C misdemeanor.

(e) An offense under Subsection (b)(2)(B), (b)(2)(C), or (b)(2)(D) ~~[of this section]~~ is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:

(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$500 ~~[\$200]~~;

(2) a Class A misdemeanor if the amount of pecuniary loss is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~;

(3) a *state jail* felony ~~[of the third degree]~~ if the amount of pecuniary loss is \$1,500 ~~[\$750]~~ or more but less than \$20,000; ~~[or]~~

(4) a felony of the *third* ~~[second]~~ degree if the amount of the pecuniary loss is \$20,000 or more *but less than \$100,000*;

(5) a *felony of the second degree* if the amount of pecuniary loss is \$100,000 or more *but less than \$200,000*; or

(6) a *felony of the first degree* if the amount of the pecuniary loss is \$200,000 or more.

(f) The conduct described in Subsection (b)(2)(A) ~~[of this section]~~ is not an offense under this section if it is undertaken by an employee of the railroad or by a representative of a labor organization which represents or is seeking to represent the employees of the railroad as long as the employee or representative has a right to engage in such conduct under the Railway Labor Act (45 U.S.C. Section 151 et seq.).

~~[Sec. 28.08. INTERFERENCE WITH ANIMALS OR ANIMAL FACILITIES. (a) In this section:~~

- ~~[(1) "Animal" means any nonhuman vertebrate animal used in agriculture, research, testing and exhibition, education, or food or fiber production, but does not include an animal held primarily as a pet.~~
- ~~[(2) "Animal facility" means any vehicle, building, structure, or premises where an animal is bred or where animals or records relating to animals are kept, handled, transported, housed, or exhibited.~~
- ~~[(3) "Tamper" means to move, alter, or interfere.~~
- ~~[(4) "Notice" means:~~
- ~~[(A) oral or written communication by the owner or someone with apparent authority to act for the owner;~~
- ~~[(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; or~~
- ~~[(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden.~~
- ~~[(b) A person commits an offense if the person, after notice is given and without the effective consent of the owner, intentionally or knowingly:~~
- ~~[(1) enters or remains in or on an animal facility;~~
- ~~[(2) makes markings, including inscriptions, slogans, drawings, or paintings, on an animal facility;~~
- ~~[(3) tampers with an animal facility;~~
- ~~[(4) damages or destroys an animal facility; or~~
- ~~[(5) removes, carries away, releases, or exercises control of an animal or property located in an animal facility.~~
- ~~[(c) An offense under Subsection (b)(1) or (2) of this section is a Class B misdemeanor unless the person causes bodily injury to another or carries a deadly weapon on or about his person during the commission of the offense, in which event the offense is a Class A misdemeanor.~~
- ~~[(d) An offense under Subsection (b)(3), (4), or (5) of this section is a Class C misdemeanor unless the person causes pecuniary loss, in which event the offense is:~~
- ~~[(1) a Class B misdemeanor if the amount of pecuniary loss is \$20 or more but less than \$200;~~
- ~~[(2) a Class A misdemeanor if the amount of pecuniary loss is \$200 or more but less than \$750;~~
- ~~[(3) a felony of the third degree if the amount of pecuniary loss is \$750 or more but less than \$20,000; or~~
- ~~[(4) a felony of the second degree if the amount of the pecuniary loss is \$20,000 or more.]~~

CHAPTER 29. ROBBERY

Sec. 29.01. DEFINITIONS. In this chapter:

- (1) "In the course of committing theft" means conduct that occurs in an attempt to commit, during the commission, or in immediate flight after the attempt or commission of theft.
- (2) "Property" means:
- (A) tangible or intangible personal property including anything severed from land; or
- (B) a document, including money, that represents or embodies anything of value.

Sec. 29.02. ROBBERY. (a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 ~~[of this code]~~ and with intent to obtain or maintain control of the property, he:

- (1) intentionally, knowingly, or recklessly causes bodily injury to another; or

(2) intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree.

Sec. 29.03. AGGRAVATED ROBBERY. (a) A person commits an offense if he commits robbery as defined in Section 29.02 ~~[of this code]~~, and he:

(1) causes serious bodily injury to another;

(2) uses or exhibits a deadly weapon; or

(3) causes bodily injury to another person or threatens or places another person in fear of imminent bodily injury or death, if the other person is:

(A) 65 years of age or older; or

(B) a disabled person.

(b) An offense under this section is a felony of the first degree.

(c) In this section, "disabled person" means an individual with a mental, physical, or developmental disability who is substantially unable to protect himself from harm.

CHAPTER 30. BURGLARY AND CRIMINAL TRESPASS

Sec. 30.01. DEFINITIONS. In this chapter:

(1) "Habitation" means a structure or vehicle that is adapted for the overnight accommodation of persons, and includes:

(A) each separately secured or occupied portion of the structure or vehicle; and

(B) each structure appurtenant to or connected with the structure or vehicle.

(2) "Building" means any enclosed structure intended for use or occupation as a habitation or for some purpose of trade, manufacture, ornament, or use.

(3) "Vehicle" includes any device in, on, or by which any person or property is or may be propelled, moved, or drawn in the normal course of commerce or transportation, except such devices as are classified as "habitation."

Sec. 30.02. BURGLARY. (a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a:

(1) *state jail felony if committed in a building other than a habitation; or*

(2) *felony of the second degree if committed in a habitation.*

(d) An offense under this section is a felony of the first degree if:

(1) the premises are a habitation; *and* ~~[or]~~

(2) any party to the offense *entered the habitation with intent to commit a felony other than felony theft* ~~[is armed with explosives or a deadly weapon; or~~

~~[(3) any party to the offense injures or attempts to injure anyone in effecting entry or while in the building or in immediate flight from the building].~~

Sec. 30.03. BURGLARY OF COIN-OPERATED OR COIN COLLECTION MACHINES. (a) A person commits an offense if, without the effective consent of the owner, he breaks or enters into any coin-operated machine, coin collection machine, or other coin-operated or coin collection receptacle, contrivance, apparatus, or equipment used for the

purpose of providing lawful amusement, sales of goods, services, or other valuable things, or telecommunications with intent to obtain property or services.

(b) For purposes of this section, "entry" includes every kind of entry except one made with the effective consent of the owner.

(c) An offense under this section is a Class A misdemeanor.

Sec. 30.04. BURGLARY OF VEHICLES. (a) A person commits an offense if, without the effective consent of the owner, he breaks into or enters a vehicle or any part of a vehicle with intent to commit any felony or theft.

(b) For purposes of this section, "enter" means to intrude:

(1) any part of the body; or

(2) any physical object connected with the body.

(c) An offense under this section is a *Class A misdemeanor* [~~felony of the third degree~~].

Sec. 30.05. CRIMINAL TRESPASS. (a) A person commits an offense if he enters or remains on property or in a building of another without effective consent and he:

(1) had notice that the entry was forbidden; or

(2) received notice to depart but failed to do so.

(b) For purposes of this section:

(1) "Entry" means the intrusion of the entire body.

(2) "Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock; ~~or~~

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;
or

(D) *the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.*

(3) "Shelter center" has the meaning assigned by Section 51.002(1), Human Resources Code.

(c) It is a defense to prosecution under this section that the actor at the time of the offense was a fire fighter or emergency medical services personnel, as that term is defined by Section 773.003, Health and Safety Code, acting in the lawful discharge of an official duty under exigent circumstances.

(d) An offense under this section is a Class B misdemeanor unless it is committed in a habitation or a shelter center or unless the actor carries a deadly weapon on or about his person during the commission of the offense, in which event it is a Class A misdemeanor.

CHAPTER 31. THEFT

Sec. 31.01. DEFINITIONS. In this chapter:

(1) [~~"Coercion" means a threat, however communicated;~~

~~[(A) to commit an offense;~~

~~[(B) to inflict bodily injury in the future on the person threatened or another;~~

~~[(C) to accuse a person of any offense; or~~

~~[(D) to expose a person to hatred, contempt, or ridicule;~~

~~[(E) to harm the credit or business repute of any person; or~~

~~[(F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.~~

[(2)] "Deception" means:

(A) creating or confirming by words or conduct a false impression of law or fact that is likely to affect the judgment of another in the transaction, and that the actor does not believe to be true;

(B) failing to correct a false impression of law or fact that is likely to affect the judgment of another in the transaction, that the actor previously created or confirmed by words or conduct, and that the actor does not now believe to be true;

(C) preventing another from acquiring information likely to affect his judgment in the transaction;

(D) selling or otherwise transferring or encumbering property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid, or is or is not a matter of official record; or

(E) promising performance that is likely to affect the judgment of another in the transaction and that the actor does not intend to perform or knows will not be performed, except that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

(2) [(3)] "Deprive" means:

(A) to withhold property from the owner permanently or for so extended a period of time that a major portion of the value or enjoyment of the property is lost to the owner;

(B) to restore property only upon payment of reward or other compensation; or

(C) to dispose of property in a manner that makes recovery of the property by the owner unlikely.

(3) [(4)] "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

(A) induced by deception or coercion;

(B) given by a person the actor knows is not legally authorized to act for the owner;

(C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions; ~~or~~

(D) given solely to detect the commission of an offense; or

(E) *given by a person who by reason of advanced age is known by the actor to have a diminished capacity to make informed and rational decisions about the reasonable disposition of property.*

(4) [(5)] "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossessory interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

(5) [(6)] "Property" means:

(A) real property;

(B) tangible or intangible personal property including anything severed from land; or

(C) a document, including money, that represents or embodies anything of value.

(6) [(7)] "Service" includes:

(A) labor and professional service;

(B) telecommunication, public utility, or ~~and~~ transportation service;

(C) lodging, restaurant service, and entertainment; and

(D) the supply of a motor vehicle or other property for use.

(7) [(8)] "Steal" means to acquire property or service by theft.

(8) [(9)] "Certificate of title" has the meaning assigned by Section 24, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

(9) [(10)] "Used or secondhand motor vehicle" means a used car, as that term is defined by Section 10, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes).

Sec. 31.02. CONSOLIDATION OF THEFT OFFENSES. Theft as defined in Section 31.03 [of this code] constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Sec. 31.03. THEFT. (a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

- (1) it is without the owner's effective consent;
- (2) the property is stolen and the actor appropriates the property knowing it was stolen by another; or
- (3) property in the custody of any law enforcement agency was explicitly represented by any law enforcement agent to the actor as being stolen and the actor appropriates the property believing it was stolen by another.

(c) For purposes of Subsection (b) [of this section]:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice;

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with him, is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Article 6687-1, Vernon's Texas Civil Statutes) that the property has been previously stolen from another if the actor pays for or loans against the property \$25 or more (or consideration of equivalent value) and the actor knowingly or recklessly:

(A) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(B) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(C) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the property. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements;

(4) for the purposes of Subdivision (3)(A) [of this subsection], "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual;

(5) stolen property does not lose its character as stolen when recovered by any law enforcement agency;

(6) an actor engaged in the business of obtaining abandoned or wrecked motor vehicles or parts of an abandoned or wrecked motor vehicle for resale, disposal, scrap, repair, rebuilding, demolition, or other form of salvage is presumed to know on receipt by the actor of stolen property that the property has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to maintain an accurate and legible inventory of each [major] motor vehicle component part purchased by or delivered to the actor, including the date of purchase or delivery, the name, age, address, sex, and driver's license number of the seller or person making the delivery, the license plate number of the motor vehicle in which the part was delivered, a complete description of the part, and the vehicle identification number of the

motor vehicle from which the part was removed, or in lieu of maintaining an inventory, fails to record the name and certificate of inventory number of the person who dismantled the motor vehicle from which the part was obtained;

(B) fails on receipt of a motor vehicle to obtain a certificate of authority, sales receipt, or transfer document as required by Article V, Section 1, Chapter 741, Acts of the 67th Legislature, Regular Session, 1981 (Article 4477-9a, Vernon's Texas Civil Statutes), or a certificate of title showing that the motor vehicle is not subject to a lien or that all recorded liens on the motor vehicle have been released; or

(C) fails on receipt of a motor vehicle to immediately remove an unexpired license plate from the motor vehicle, to keep the plate in a secure and locked place, or to maintain an inventory, on forms provided by the Texas [State] Department of [Highways and Public] Transportation, of license plates kept under this paragraph, including for each plate or set of plates the license plate number and the make, motor number, and vehicle identification number of the motor vehicle from which the plate was removed; and

(7) an actor who purchases or receives a used or secondhand motor vehicle is presumed to know on receipt by the actor of the motor vehicle that the motor vehicle has been previously stolen from another if the actor knowingly or recklessly:

(A) fails to report to the Texas [State] Department of [Highways and Public] Transportation the failure of the person who sold or delivered the motor vehicle to the actor to deliver to the actor a properly executed certificate of title to the motor vehicle at the time the motor vehicle was delivered; or

(B) fails to file with the county tax assessor-collector of the county in which the actor received the motor vehicle, not later than the 20th day after the date the actor received the motor vehicle, the registration license receipt and certificate of title or evidence of title delivered to the actor in accordance with Section 2, Chapter 364, Acts of the 50th Legislature, Regular Session, 1947 (Article 6687-6, Vernon's Texas Civil Statutes), at the time the motor vehicle was delivered[; and

~~[(8) an actor who possesses a shopping cart, laundry cart, or container that has a name or mark and is not on the premises of the owner or an adjacent parking area is presumed to have appropriated property without the owner's effective consent].~~

(d) It is not a defense to prosecution under this section that:

(1) the offense occurred as a result of a deception or strategy on the part of a law enforcement agency, including the use of an undercover operative or peace officer;

(2) the actor was provided by a law enforcement agency with a facility in which to commit the offense or an opportunity to engage in conduct constituting the offense; or

(3) the actor was solicited to commit the offense by a peace officer, and the solicitation was of a type that would encourage a person predisposed to commit the offense to actually commit the offense, but would not encourage a person not predisposed to commit the offense to actually commit the offense.

(e) Except as provided by Subsection (f) ~~[of this section]~~, an offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$20;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$20 or more but less than \$500 ~~[\$200]~~; or

(B) the value of the property stolen is less than \$20 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if:

~~[(A)]~~ the value of the property stolen is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~; or

~~[(B) the property stolen is one firearm, as defined by Section 46.01 of this code, and is valued at less than \$400];~~

(4) a state jail felony ~~[of the third degree]~~ if:

(A) the value of the property stolen is \$1,500 [\$750] or more but less than \$20,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$20,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave;

(C) the property stolen is a [one] firearm, as defined by Section 46.01 [of this code, and is valued at more than \$400]; or

(D) [the property stolen is two or more firearms, as defined by Section 46.01 of this code; or

[(E)] the value of the property stolen is less than \$1,500 [\$750] and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the *third* [second] degree if:

~~[(A) the value of the property stolen is less than \$100,000 and the property is:~~

~~[(i) combustible hydrocarbon natural or synthetic natural gas, or crude petroleum oil;~~

~~[(ii) equipment designed for use in exploration for or production of natural gas or crude petroleum oil; or~~

~~[(iii) equipment designed for use in remedial or diagnostic operations on gas or crude petroleum oil wells;~~

[(B)] the value of the property stolen is \$20,000 or more but less than \$100,000; or

~~[(C) the value of the property is less than \$100,000 and the property was unlawfully appropriated or attempted to be unlawfully appropriated by threat to commit a felony offense against the person or property of the person threatened or another or to withhold information about the location or purported location of a bomb, poison, or other harmful object that threatens to harm the person or property of the person threatened or another person; or]~~

(6) a felony of the *second* [first] degree if:

[(A)] the value of the property stolen is \$100,000 or more *but less than \$200,000*; or

(7) *a felony of the first degree if the value of the property stolen is \$200,000 or more* [(B) ~~the value of the property is \$100,000 or more and the property was unlawfully appropriated or attempted to be unlawfully appropriated in the manner described by Subdivision (5)(C) of this subsection.~~]

(f) An offense described for purposes of punishment by Subsections [Subsection] (e)(1)–(6) [of this section] is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the actor was a public servant at the time of the offense; and

(2) the property appropriated came into the actor's custody, possession, or control by virtue of his status as a public servant.

~~[(g) For the purposes of Subsection (e)(8) of this section, "shopping cart," "laundry cart," "container," and "name or mark" have the respective meanings assigned by Section 17.31, Business & Commerce Code.]~~

Sec. 31.04. THEFT OF SERVICE. (a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

(b) For purposes of this section, intent to avoid payment is presumed if:

(1) the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments;

(2) the actor failed to return the property held under a rental agreement within 10 days after receiving notice demanding return; or

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment.

(c) For purposes of Subsection (b)(2) ~~[of this section]~~, notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement.

(d) If written notice is given in accordance with Subsection (c) ~~[of this section]~~, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than \$20;

(2) a Class B misdemeanor if the value of the service stolen is \$20 or more but less than \$500 ~~[\$200]~~;

(3) a Class A misdemeanor if the value of the service stolen is \$500 ~~[\$200]~~ or more but less than \$1,500 ~~[\$750]~~;

(4) a *state jail felony* ~~[of the third degree]~~ if the value of the service stolen is \$1,500 ~~[\$750]~~ or more but less than \$20,000;

(5) a felony of the *third* ~~[second]~~ degree if the value of the service stolen is \$20,000 or more *but less than \$100,000*;

(6) a *felony of the second degree* if the value of the service stolen is \$100,000 or more *but less than \$200,000*; or

(7) a *felony of the first degree* if the value of the service stolen is \$200,000 or more.

Sec. 31.05. THEFT OF TRADE SECRETS. (a) For purposes of this section:

(1) "Article" means any object, material, device, or substance or any copy thereof, including a writing, recording, drawing, sample, specimen, prototype, model, photograph, microorganism, blueprint, or map.

(2) "Copy" means a facsimile, replica, photograph, or other reproduction of an article or a note, drawing, or sketch made of or from an article.

(3) "Representing" means describing, depicting, containing, constituting, reflecting, or recording.

(4) "Trade secret" means the whole or any part of any scientific or technical information, design, process, procedure, formula, or improvement that has value and that the owner has taken measures to prevent from becoming available to persons other than those selected by the owner to have access for limited purposes.

(b) A person commits an offense if, without the owner's effective consent, he knowingly:

(1) steals a trade secret;

(2) makes a copy of an article representing a trade secret; or

(3) communicates or transmits a trade secret.

(c) An offense under this section is a felony of the third degree.

Sec. 31.06. PRESUMPTION FOR THEFT BY CHECK. (a) If the actor obtained property or secured performance of service by issuing or passing a check or similar sight order for the payment of money, when the issuer did not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders then outstanding, his intent to deprive the owner of property under Section 31.03 ~~[of this code]~~ (Theft) or to avoid payment for service under Section 31.04 ~~[of this code]~~ (Theft of Service) is presumed (except in the case of a postdated check or order) if:

- (1) he had no account with the bank or other drawee at the time he issued the check or order; or
- (2) payment was refused by the bank or other drawee for lack of funds or insufficient funds, on presentation within 30 days after issue, and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.
- (b) For purposes of Subsection (a)(2) ~~[of this section]~~, notice may be actual notice or notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:
 - (1) the check or order;
 - (2) the records of the bank or other drawee; or
 - (3) the records of the person to whom the check or order has been issued or passed.
- (c) If written notice is given in accordance with Subsection (b) ~~[of this section]~~, it is presumed that the notice was received no later than five days after it was sent.
- (d) Nothing in this section prevents the prosecution from establishing the requisite intent by direct evidence.
- (e) Partial restitution does not preclude the presumption of the requisite intent under this section.

Sec. 31.07. UNAUTHORIZED USE OF A VEHICLE. (a) A person commits an offense if he intentionally or knowingly operates another's boat, airplane, or motor-propelled vehicle without the effective consent of the owner.

(b) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

Sec. 31.08. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) ~~[of this section]~~, value under this chapter is:

- (1) the fair market value of the property or service at the time and place of the offense; or
- (2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the theft.
- (b) The value of documents, other than those having a readily ascertainable market value, is:
 - (1) the amount due and collectible at maturity less that part which has been satisfied, if the document constitutes evidence of a debt; or
 - (2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.
- (c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) ~~[of this section]~~, the property or service is deemed to have a value of \$500 or more ~~[than \$200]~~ but less than \$1,500 ~~[\$750]~~.
- (d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) ~~[of this section]~~ to determine value for purposes of this chapter.

Sec. 31.09. AGGREGATION OF AMOUNTS INVOLVED IN THEFT. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of the offense.

Sec. 31.10. ACTOR'S INTEREST IN PROPERTY. It is no defense to prosecution under this chapter that the actor has an interest in the property or service stolen if another person has the right of exclusive possession of the property.

Sec. 31.11. TAMPERING WITH IDENTIFICATION NUMBERS. (a) A person commits an offense if the person:

- (1) knowingly or intentionally removes, alters, or obliterates the serial number or other permanent identification marking on tangible personal property; or

(2) possesses, sells, or offers for sale tangible personal property and:

(A) the actor knows that the serial number or other permanent identification marking has been removed, altered, or obliterated; or

(B) a reasonable person in the position of the actor would have known that the serial number or other permanent identification marking has been removed, altered, or obliterated.

(b) It is an affirmative defense to prosecution under this section that the person was:

(1) the owner or acting with the effective consent of the owner of the property involved ~~[and the item of property is not property listed in Subsection (e) of this section];~~

(2) a peace officer acting in the actual discharge of official duties; or

(3) acting with respect to a number assigned to a vehicle by the Texas [State] Department of [Highways and Public] Transportation and the person was:

(A) in the actual discharge of official duties as an employee or agent of the department; or

(B) in full compliance with the rules of the department as an applicant for an assigned number approved by the department.

(c) Property involved in a violation of this section may be treated as stolen for purposes of custody and disposition of the property.

(d) ~~An [Except as provided by Subsection (e) of this section, an]~~ offense under this section is a Class A misdemeanor.

(e) ~~[An offense under this section is a felony of the third degree if the property involved is:~~

~~[(1) equipment designed for exploration or production of natural gas or crude oil;~~

~~[(2) equipment designed for remedial or diagnostic operations on gas or crude oil wells;~~

~~[(3) a vehicle or part of a vehicle;~~

~~[(4) a tractor, farm implement, unit of special mobile equipment, or a unit of off-road construction equipment not subject to the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes);~~

~~[(5) an aircraft, boat, or part of an aircraft or boat; or~~

~~[(6) a firearm or part of a firearm.~~

~~[(4)]~~ In this section, "vehicle" has the meaning given by Section 2, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

~~[Sec. 31.12. UNAUTHORIZED USE OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE. (a) A person commits an offense if, with the intent to intercept and decode a transmission by a subscription television service without the authorization of the provider of the service, the person intentionally or knowingly attaches to, causes to be attached to, or incorporates in a television set, video tape recorder, or other equipment designed to receive a television transmission a device that intercepts and decodes the transmission.~~

~~[(b) A person commits an offense if, with the intent to intercept, descramble, or decode a cable television service and without the authorization of the provider of the service, the person intentionally or knowingly:~~

~~[(1) physically, electrically, electronically, acoustically, or inductively makes or maintains an unauthorized cable connection or otherwise intercepts cable television service;~~

~~[(2) attaches to, causes to be attached to, maintains an attachment to, or incorporates in a television set, video tape recorder, other equipment designed to receive a television transmission, or equipment of a cable television company a device that intercepts, descrambles, or decodes the service; or~~

~~[(3) tampers with, changes, or modifies the equipment of a cable television company.~~

~~[(e) In this section:~~

~~[(1) "Cable television service" means a service provided by or through a facility of a cable television system, closed circuit coaxial cable communication system, or microwave or similar transmission service used in connection with a cable television system.~~

~~[(2) "Device" means a device other than a nondecoding or nondescrambling channel frequency converter or television receiver type accepted by the Federal Communications Commission.~~

~~[(3) "Subscription television service" means a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.~~

~~[(d) If an unauthorized device designed to intercept, descramble, or decode a subscription television transmission or if an unauthorized device designed to intercept, descramble, or decode a cable television service is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the device to intercept, descramble, or decode a transmission or a service. If an unauthorized cable connection is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the connection to intercept cable television service. If equipment of a cable television company that has been tampered with, changed, or modified is present on the premises or property occupied and used by a person, it is presumed that the person intentionally or knowingly used the equipment to intercept, descramble, or decode a cable television service.~~

~~[(e) The presumptions created by Subsection (d) of this section do not apply if the person accused shows by a preponderance of the evidence that the presence of the unauthorized device or connection, or the tampering, change, or modification of the equipment of the cable television company, may be attributed to the conduct of another.~~

~~[(f) The presumptions created by Subsection (d) of this section do not apply to a telecommunications company that provides local or long distance communications services and uses equipment described by that subsection in the normal course of its business.~~

~~[(g) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.~~

~~[(h) An offense under this section is a Class B misdemeanor unless the actor committed the offense for remuneration, in which event it is a Class A misdemeanor.~~

~~[Sec. 31.13. MANUFACTURE, SALE, OR DISTRIBUTION OF TELEVISION DECODING AND INTERCEPTION DEVICE OR CABLE DESCRAMBLING, DECODING, OR INTERCEPTION DEVICE. (a) A person commits an offense if the person for remuneration intentionally or knowingly manufactures, distributes, or sells, with an intent to aid an offense under Section 31.12 of this code, a device or a plan or part for a device that intercepts and decodes a transmission by a subscription television service or that intercepts, descrambles, or decodes a cable television service.~~

~~[(b) In this section, "cable television service," "device," and "subscription television service" have the meanings assigned by Section 31.12 of this code.~~

~~[(c) This section does not prohibit the manufacture, distribution, sale, or use of satellite receiving antennas that are otherwise permitted by state or federal law.~~

~~[(d) An offense under this section is a Class A misdemeanor.]~~

CHAPTER 32. FRAUD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 32.01. DEFINITIONS. In this chapter:

(1) "Financial institution" means a bank, trust company, insurance company, credit union, building and loan association, *savings and loan association*, investment trust, investment company, or any other organization held out to the public as a place for deposit of funds or medium of savings or collective investment.

(2) "Property" means:

- (A) real property;
- (B) tangible or intangible personal property including anything severed from land; or
- (C) a document, including money, that represents or embodies anything of value.

(3) "Service" includes:

- (A) labor and professional service;
- (B) telecommunication, public utility, and transportation service;
- (C) lodging, restaurant service, and entertainment; and
- (D) the supply of a motor vehicle or other property for use.

(4) "Steal" means to acquire property or service by theft.

Sec. 32.02. VALUE. (a) Subject to the additional criteria of Subsections (b) and (c) [~~of this section~~], value under this chapter is:

(1) the fair market value of the property or service at the time and place of the offense; or

(2) if the fair market value of the property cannot be ascertained, the cost of replacing the property within a reasonable time after the offense.

(b) The value of documents, other than those having a readily ascertainable market value, is:

(1) the amount due and collectible at maturity less any part that has been satisfied, if the document constitutes evidence of a debt; or

(2) the greatest amount of economic loss that the owner might reasonably suffer by virtue of loss of the document, if the document is other than evidence of a debt.

(c) If property or service has value that cannot be reasonably ascertained by the criteria set forth in Subsections (a) and (b) [~~of this section~~], the property or service is deemed to have a value of \$500 or more [~~than \$20~~] but less than \$1,500 [~~\$200~~].

(d) If the actor proves by a preponderance of the evidence that he gave consideration for or had a legal interest in the property or service stolen, the amount of the consideration or the value of the interest so proven shall be deducted from the value of the property or service ascertained under Subsection (a), (b), or (c) [~~of this section~~] to determine value for purposes of this chapter.

Sec. 32.03. AGGREGATION OF AMOUNTS INVOLVED IN FRAUD. When amounts are obtained in violation of this chapter pursuant to one scheme or continuing course of conduct, whether from the same or several sources, the conduct may be considered as one offense and the amounts aggregated in determining the grade of offense.

[Sections 32.04 to 32.20 ~~are~~ reserved for expansion]

SUBCHAPTER B. FORGERY

Sec. 32.21. FORGERY. (a) For purposes of this section:

(1) "Forge" means:

- (A) to alter, make, complete, execute, or authenticate any writing so that it purports:
 - (i) to be the act of another who did not authorize that act;
 - (ii) to have been executed at a time or place or in a numbered sequence other than was in fact the case; or
 - (iii) to be a copy of an original when no such original existed;

(B) to issue, transfer, register the transfer of, pass, publish, or otherwise utter a writing that is forged within the meaning of Paragraph (A) [~~of this subdivision~~]; or

(C) to possess a writing that is forged within the meaning of Paragraph (A) with intent to utter it in a manner specified in Paragraph (B) [~~of this subdivision~~].

(2) "Writing" includes:

- (A) printing or any other method of recording information;
- (B) money, coins, tokens, stamps, seals, credit cards, badges, and trademarks; and
- (C) symbols of value, right, privilege, or identification.

(b) A person commits an offense if he forges a writing with intent to defraud or harm another.

(c) Except as provided in Subsections (d) and (e) ~~[of this section]~~ an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a *state jail felony* ~~[of the third degree]~~ if the writing is or purports to be a will, codicil, deed, deed of trust, mortgage, security instrument, security agreement, credit card, check or similar sight order for payment of money, contract, release, or other commercial instrument.

(e) An offense under this section is a felony of the *third* ~~[second]~~ degree if the writing is or purports to be:

- (1) part of an issue of money, securities, postage or revenue stamps;
- (2) a government record listed in Section 37.01(1)(C) ~~[of this code]~~; or

(3) other instruments issued by a state or national government or by a subdivision of either, or part of an issue of stock, bonds, or other instruments representing interests in or claims against another person.

(f) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more writings of the same type and if each writing is a government record listed in Section 37.01(1)(C) ~~[of this code]~~.

Sec. 32.22. CRIMINAL SIMULATION. (a) A person commits an offense if, with intent to defraud or harm another:

(1) he makes or alters an object, in whole or in part, so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(2) ~~he sells, passes, or otherwise utters an object so made or altered;~~

~~[(3)]~~ he possesses an object so made or altered, with intent to sell, pass, or otherwise utter it; or

~~(3)~~ ~~[(4)]~~ he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(b) An offense under this section is a Class A misdemeanor.

[Sections 32.23 to 32.30 ~~[are]~~ reserved for expansion]

SUBCHAPTER C. CREDIT

Sec. 32.31. CREDIT CARD OR DEBIT CARD ABUSE. (a) For purposes of this section:

(1) "Cardholder" means the person named on the face of a credit card or debit card to whom or for whose benefit the ~~[credit]~~ card is issued.

(2) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. *The term [It] includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the property or service.*

(3) "Expired credit card" means a credit card bearing an expiration date after that date has passed.

(4) *"Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal. The term includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.*

(5) "Expired debit card" means a debit card bearing as its expiration date a date that has passed.

(6) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account under a line of credit previously authorized by the institution for the customer.

(7) "Customer convenience terminal" means an unmanned teller machine the use of which does not involve personnel of a financial institution.

(b) A person commits an offense if:

(1) with intent to obtain a benefit [~~property or service~~] fraudulently, he presents or uses a credit card or debit card with knowledge that:

(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or

(B) the card has expired or has been revoked or cancelled;

(2) with intent to obtain a benefit [~~property or service~~], he uses a fictitious credit card or debit card or the pretended number or description of a fictitious [~~credit~~] card;

(3) he receives a benefit [~~property or service~~] that he knows has been obtained in violation of this section;

(4) he steals a credit card or debit card or, with knowledge that it has been stolen, receives a credit card or debit card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;

(5) he buys a credit card or debit card from a person who he knows is not the issuer;

(6) not being the issuer, he sells a credit card or debit card;

(7) he uses or induces the cardholder to use the cardholder's credit card to obtain property or service for the actor's benefit for which the cardholder is financially unable to pay;

(8) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a credit card or debit card with intent to use it;

(9) he possesses two or more incomplete credit cards or debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a [~~credit~~] card is incomplete if part of the matter that an issuer requires to appear on the [~~credit~~] card before it can be used, [~~other than the signature of the cardholder;~~] has not yet been stamped, embossed, imprinted, or written on it;

(10) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or the cardholder, furnishes goods or services on presentation of a credit card obtained or retained in violation of this section or a credit card that is forged, expired, or revoked; or

(11) being authorized by an issuer to furnish goods or services on presentation of a credit card, he, with intent to defraud the issuer or a cardholder, fails to furnish goods or services that he represents in writing to the issuer that he has furnished.

(c) It is presumed that a person who used a revoked, cancelled, or expired credit card or debit card had knowledge that the card had been revoked, cancelled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.

(d) An offense under this section is a state jail felony [~~of the third degree~~].

Sec. 32.32. FALSE STATEMENT TO OBTAIN PROPERTY OR CREDIT. (a) For purposes of this section, "credit" includes:

- (1) a loan of money;
- (2) furnishing property or service on credit;
- (3) extending the due date of an obligation;
- (4) comaking, endorsing, or guaranteeing a note or other instrument for obtaining credit;
- (5) a line or letter of credit; and
- (6) a credit card, as defined in Section 32.31 ~~[of this code]~~ (Credit Card Abuse).

(b) A person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another.

(c) An offense under this section is a Class A misdemeanor.

Sec. 32.33. HINDERING SECURED CREDITORS. (a) For purposes of this section:

(1) "Remove" means transport, without the effective consent of the secured party, from the state in which the property was located when the security interest or lien attached.

(2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(b) A person who has signed a security agreement creating a security interest in property or a mortgage or deed of trust creating a lien on property commits an offense if, with intent to hinder enforcement of that interest or lien, he destroys, removes, conceals, encumbers, or otherwise harms or reduces the value of the property.

(c) For purposes of this section, a person is presumed to have intended to hinder enforcement of the security interest or lien if, when any part of the debt secured by the security interest or lien was due, he failed:

- (1) to pay the part then due; and
- (2) if the secured party had made demand, to deliver possession of the secured property to the secured party.

(d) ~~An [Except as provided in Subsections (e) and (f) of this section, an] offense under Subsection (b) [this section] is a:~~

(1) Class C misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is less than \$20;

(2) Class B misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property destroyed, removed, concealed, encumbered, or otherwise harmed or reduced in value is \$200,000 or more [Class A misdemeanor].

~~(e) [If the actor removes the property, the offense is a felony of the third degree.~~

~~[(f)]~~ A person who is a debtor under a security agreement, and who does not have a right to sell or dispose of the secured property or is required to account to the secured party for the proceeds of a permitted sale or disposition, commits an offense if the person sells or otherwise disposes of the secured property, or does not account to the secured party for the proceeds of a sale or other disposition as required, with intent to appropriate (as defined in Chapter 31 ~~[of this code]~~) the proceeds or value of the secured property. A person is presumed to have intended to appropriate proceeds if the person does not deliver the proceeds to the secured party or account to the secured party for the proceeds before the 11th day after the day that

the secured party makes a lawful demand for the proceeds or account. An offense under this subsection is:

(1) a Class C [A] misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of less than \$20 [\$10,000];

(2) a Class B misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20 or more but less than \$500;

(3) a Class A misdemeanor if the proceeds obtained from the sale or other disposition are money or goods having a value of \$500 or more but less than \$1,500;

(4) a state jail felony if the proceeds obtained from the sale or other disposition are money or goods having a value of \$1,500 or more but less than \$20,000;

(5) a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$20,000 or more but less than \$100,000;

(6) a felony of the second degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$200,000 or more [a felony of the third degree if the proceeds obtained from the sale or other disposition are money or goods having a value of \$10,000 or more].

~~[Sec. 32.34. FRAUD IN INSOLVENCY. (a) A person commits an offense if, when proceedings have been or are about to be instituted for the appointment of a trustee, receiver, or other person entitled to administer property for the benefit of creditors, or when any other assignment, composition, or liquidation for the benefit of creditors has been or is about to be made:~~

~~[(1) he destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property with intent to defeat or obstruct the operation of a law relating to administration of property for the benefit of creditors;~~

~~[(2) he intentionally falsifies any writing or record relating to the property or any claim against the debtor; or~~

~~[(3) he intentionally misrepresents or refuses to disclose to a trustee or receiver, or other person entitled to administer property for the benefit of creditors, the existence, amount, or location of the property, or any other information that the actor could legally be required to furnish in relation to the administration.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.35. RECEIVING DEPOSIT, PREMIUM, OR INVESTMENT IN FAILING FINANCIAL INSTITUTION. (a) A person directing or participating in the direction of a financial institution commits an offense if he receives or permits the receipt of a deposit, premium payment, or investment in the institution knowing that, due to the financial condition of the institution:~~

~~[(1) it is unable to make payment of the deposit on demand, if it is a deposit ordinarily payable on demand; or~~

~~[(2) it is about to suspend operations or go into receivership.~~

~~[(b) It is a defense to prosecution under this section that:~~

~~[(1) the person making the deposit, premium payment, or investment was adequately informed of the financial condition of the institution; or~~

~~[(2) the accounts of the institution are insured or guaranteed by an agency or instrumentality of the United States government or in accordance with the Texas Credit Union Act (Article 2461-1.01 et seq., Vernon's Texas Civil Statutes).~~

~~[(c) An offense under this section is a Class A misdemeanor.]~~

Sec. 32.34 [32.36]. FRAUDULENT TRANSFER OF A MOTOR VEHICLE. (a) In this section:

(1) "Lease" means the grant of use and possession of a motor vehicle for consideration, whether or not the grant includes an option to buy the vehicle.

(2) "Motor vehicle" means a device in, on, or by which a person or property is or may be transported or drawn on a highway, except a device used exclusively on stationary rails or tracks.

(3) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.

(4) "Third party" means a person other than the actor or the owner of the vehicle.

(5) "Transfer" means to transfer possession, whether or not another right is also transferred, by means of a sale, lease, sublease, lease assignment, or other property transfer.

(b) A person commits an offense if the person acquires, accepts possession of, or exercises control over the motor vehicle of another under a written or oral agreement to arrange for the transfer of the vehicle to a third party and:

(1) knowing the vehicle is subject to a security interest, lease, or lien, the person transfers the vehicle to a third party without first obtaining written authorization from the vehicle's secured creditor, lessor, or lienholder;

(2) intending to defraud or harm the vehicle's owner, the person transfers the vehicle to a third party;

(3) intending to defraud or harm the vehicle's owner, the person disposes of the vehicle in a manner other than by transfer to a third party; or

(4) the person does not disclose the location of the vehicle on the request of the vehicle's owner, secured creditor, lessor, or lienholder.

(c) For the purposes of Subsection (b)(2) ~~[of this section]~~, the actor is presumed to have intended to defraud or harm the motor vehicle's owner if the actor does not take reasonable steps to determine whether or not the third party is financially able to pay for the vehicle.

(d) It is a defense to prosecution under Subsection (b)(1) ~~[of this section]~~ that the entire indebtedness secured by or owed under the security interest, lease, or lien is paid or satisfied in full not later than the 30th day after the date that the transfer was made.

(e) It is not a defense to prosecution under Subsection (b)(1) ~~[of this section]~~ that the motor vehicle's owner has violated a contract creating a security interest, lease, or lien in the motor vehicle.

(f) An offense under Subsection (b)(1), (b)(2), or (b)(3) ~~[of this section]~~ is:

(1) a *state jail felony* ~~[of the third degree]~~ if the value of the motor vehicle is less than \$20,000; or

(2) a felony of the *third* ~~[second]~~ degree if the value of the motor vehicle is \$20,000 or more.

(g) An offense under Subsection (b)(4) ~~[of this section]~~ is a Class A misdemeanor. Sec. 32.35 [32.37]. CREDIT CARD TRANSACTION RECORD LAUNDERING. (a) In this section:

(1) "Agent" means a person authorized to act on behalf of another and includes an employee.

(2) "Authorized vendor" means a person authorized by a creditor to furnish property, service, or anything else of value upon presentation of a credit card by a cardholder.

(3) "Cardholder" means the person named on the face of a credit card to whom or for whose benefit the credit card is issued, and includes the named person's agents.

(4) "Credit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to obtain property or services on credit. It includes the number or description on the device if the device itself is not produced at the time of ordering or obtaining the property or service.

(5) "Creditor" means a person licensed under Chapter 3, Subtitle 2, Title 79, Revised Statutes (Article 5069-3.01 et seq., Vernon's Texas Civil Statutes), a bank, savings and loan association, credit union, or other regulated financial institution that lends money or otherwise extends credit to a cardholder through a credit card and that authorizes other persons to honor the credit card.

(b) A person commits an offense if the person is an authorized vendor who, with intent to defraud the creditor or cardholder, presents to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(c) A person commits an offense if, without the creditor's authorization, the person employs, solicits, or otherwise causes an authorized vendor or the vendor's agent to present to a creditor, for payment, a credit card transaction record of a sale that was not made by the authorized vendor or the vendor's agent.

(d) It is presumed that a person is not the agent of an authorized vendor if a fee is paid or offered to be paid by the person to the authorized vendor in connection with the vendor's presentment to a creditor of a credit card transaction record.

(e) An offense under this section is a:

(1) *Class C misdemeanor* if the amount of the record of a sale is less than \$20;

(2) *Class B misdemeanor* if the amount of the record of a sale is \$20 or more but less than \$500;

(3) *Class A misdemeanor* if the amount of the record of a sale is \$500 or more but less than \$1,500;

(4) *state jail felony* if the amount of the record of a sale is \$1,500 or more but less than \$20,000;

(5) *felony of the third degree* if the amount of the record of a sale is \$20,000 or more but less than \$100,000;

(6) *felony of the second degree* if the amount of the record of a sale is \$100,000 or more but less than \$200,000; or

(7) *felony of the first degree* if the amount of the record of a sale is \$200,000 or more [~~Class A misdemeanor~~].

[Sections ~~32.36~~ [32.38] to 32.40 reserved for expansion]

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

Sec. 32.41. **ISSUANCE OF BAD CHECK.** (a) A person commits an offense if he issues or passes a check or similar sight order for the payment of money knowing that the issuer does not have sufficient funds in or on deposit with the bank or other drawee for the payment in full of the check or order as well as all other checks or orders outstanding at the time of issuance.

(b) This section does not prevent the prosecution from establishing the required knowledge by direct evidence; however, for purposes of this section, the issuer's knowledge of insufficient funds is presumed (except in the case of a postdated check or order) if:

(1) he had no account with the bank or other drawee at the time he issued the check or order; or

(2) payment was refused by the bank or other drawee for lack of funds or insufficient funds on presentation within 30 days after issue and the issuer failed to pay the holder in full within 10 days after receiving notice of that refusal.

(c) Notice for purposes of Subsection (b)(2) [~~of this section~~] may be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the issuer at his address shown on:

(1) the check or order;

(2) the records of the bank or other drawee; or

(3) the records of the person to whom the check or order has been issued or passed.

(d) If notice is given in accordance with Subsection (c) [~~of this section~~], it is presumed that the notice was received no later than five days after it was sent.

(e) A person charged with an offense under this section may make restitution for the bad checks. Restitution shall be made through the prosecutor's office if collection and processing

were initiated through that office. In other cases restitution may, with the approval of the court in which the offense is filed, be made through the court.

(f) An offense under this section is a Class C misdemeanor.

(g) An offense under this section is not a lesser included offense of an offense under Section 31.03 or 31.04 ~~[of this code]~~.

Sec. 32.42. DECEPTIVE BUSINESS PRACTICES. (a) For purposes of this section:

(1) "Adulterated" means varying from the standard of composition or quality prescribed by law or set by established commercial usage.

(2) "Business" includes trade and commerce and advertising, selling, and buying service or property.

(3) "Commodity" means any tangible or intangible personal property.

(4) "Contest" includes sweepstake, puzzle, and game of chance.

(5) "Deceptive sales contest" means a sales contest:

(A) that misrepresents the participant's chance of winning a prize;

(B) that fails to disclose to participants on a conspicuously displayed permanent poster (if the contest is conducted by or through a retail outlet) or on each card game piece, entry blank, or other paraphernalia required for participation in the contest (if the contest is not conducted by or through a retail outlet):

(i) the geographical area or number of outlets in which the contest is to be conducted;

(ii) an accurate description of each type of prize;

(iii) the minimum number and minimum amount of cash prizes; and

(iv) the minimum number of each other type of prize; or

(C) that is manipulated or rigged so that prizes are given to predetermined persons or retail establishments. A sales contest is not deceptive if the total value of prizes to each retail outlet is in a uniform ratio to the number of game pieces distributed to that outlet.

(6) "Misabeled" means varying from the standard of truth or disclosure in labeling prescribed by law or set by established commercial usage.

(7) "Prize" includes gift, discount, coupon, certificate, gratuity, and any other thing of value awarded in a sales contest.

(8) "Sales contest" means a contest in connection with the sale of a commodity or service by which a person may, as determined by drawing, guessing, matching, or chance, receive a prize and which is not regulated by the rules of a federal regulatory agency.

(9) "Sell" and "sale" include offer for sale, advertise for sale, expose for sale, keep for the purpose of sale, deliver for or after sale, solicit and offer to buy, and every disposition for value.

(b) A person commits an offense if in the course of business he intentionally, knowingly, recklessly, or with criminal negligence commits one or more of the following deceptive business practices:

(1) using, selling, or possessing for use or sale a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(2) selling less than the represented quantity of a property or service;

(3) taking more than the represented quantity of property or service when as a buyer the actor furnishes the weight or measure;

(4) selling an adulterated or mislabeled commodity;

(5) passing off property or service as that of another;

(6) representing that a commodity is original or new if it is deteriorated, altered, rebuilt, reconditioned, reclaimed, used, or secondhand;

(7) representing that a commodity or service is of a particular style, grade, or model if it is of another;

(8) advertising property or service with intent:

- (A) not to sell it as advertised, or
- (B) not to supply reasonably expectable public demand, unless the advertising adequately discloses a time or quantity limit;
- (9) representing the price of property or service falsely or in a way tending to mislead;
- (10) making a materially false or misleading statement of fact concerning the reason for, existence of, or amount of a price or price reduction;
- (11) conducting a deceptive sales contest; or
- (12) making a materially false or misleading statement:
 - (A) in an advertisement for the purchase or sale of property or service; or
 - (B) otherwise in connection with the purchase or sale of property or service.
- (c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) ~~[of this section]~~ is:
 - (1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or
 - (2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.
- (d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

Sec. 32.43. COMMERCIAL BRIBERY. (a) For purposes of this section:

- (1) "Beneficiary" means a person for whom a fiduciary is acting.
- (2) "Fiduciary" means:
 - (A) an agent or employee;
 - (B) a trustee, guardian, custodian, administrator, executor, conservator, receiver, or similar fiduciary;
 - (C) a lawyer, physician, accountant, appraiser, or other professional advisor; or
 - (D) an officer, director, partner, manager, or other participant in the direction of the affairs of a corporation or association.
- (b) A person who is a fiduciary commits an offense if, without the consent of his beneficiary, he intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another person on agreement or understanding that the benefit will influence the conduct of the fiduciary in relation to the affairs of his beneficiary.
- (c) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (b) ~~[of this section]~~.
- (d) An offense under this section is a *state jail felony* ~~[of the third degree]~~.
- (e) In lieu of a fine that is authorized by Subsection (d) ~~[of this section]~~, and in addition to the imprisonment that is authorized by that subsection, if the court finds that an individual who is a fiduciary gained a benefit through the commission of an offense under Subsection (b) ~~[of this section]~~, the court may sentence the individual to pay a fine in an amount fixed by the court, not to exceed double the value of the benefit gained. This subsection does not affect the application of Section 12.51(c) ~~[of this code]~~ to an offense under this section committed by a corporation or association.

Sec. 32.44. RIGGING PUBLICLY EXHIBITED CONTEST. (a) A person commits an offense if, with intent to affect the outcome (including the score) of a publicly exhibited contest:

- (1) he offers, confers, or agrees to confer any benefit on, or threatens harm to:
 - (A) a participant in the contest to induce him not to use his best efforts; or
 - (B) an official or other person associated with the contest; or
- (2) he tampers with a person, animal, or thing in a manner contrary to the rules of the contest.

(b) A person commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any benefit the conferring of which is an offense under Subsection (a) ~~[of this section]~~.

(c) ~~An [Except as provided in Subsection (d) of this section, an] offense under this section is a Class A misdemeanor.~~

~~[(d) An offense under this section is a felony of the third degree if the actor's conduct is in connection with betting or wagering on the contest.]~~

Sec. 32.441. ILLEGAL RECRUITMENT OF AN ATHLETE. (a) A person commits an offense if, without the consent of the governing body or a designee of the governing body of an institution of higher education, the person intentionally or knowingly solicits, accepts, or agrees to accept any benefit from another on an agreement or understanding that the benefit will influence the conduct of the person in enrolling in the institution and participating in intercollegiate athletics.

(b) A person commits an offense if he offers, confers, or agrees to confer any benefit the acceptance of which is an offense under Subsection (a) ~~[of this section]~~.

(c) It is an exception to prosecution under this section that the person offering, conferring, or agreeing to confer a benefit and the person soliciting, accepting, or agreeing to accept a benefit are related within the second degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(d) It is an exception to prosecution under Subsection (a) ~~[of this section]~~ that, not later than the 60th day after the date the person accepted or agreed to accept a benefit, the person contacted a law enforcement agency and furnished testimony or evidence about the offense.

(e) An offense under ~~[Subsection (a) of]~~ this section is a:

- (1) *Class C misdemeanor if the value of the benefit is less than \$20;*
- (2) *Class B misdemeanor if the value of the benefit is \$20 or more but less than \$500;*
- (3) *Class A misdemeanor if the value of the benefit is \$500 or more but less than \$1,500;*
- (4) *state jail felony if the value of the benefit is \$1,500 or more but less than \$20,000;*
- (5) *felony of the third degree if the value of the benefit is \$20,000 or more but less than \$100,000;*
- (6) *felony of the second degree if the value of the benefit is \$100,000 or more but less than \$200,000; or*
- (7) *felony of the first degree if the value of the benefit is \$200,000 or more [Class A misdemeanor. An offense under Subsection (b) of this section is a felony of the third degree].*

Sec. 32.45. MISAPPLICATION OF FIDUCIARY PROPERTY OR PROPERTY OF FINANCIAL INSTITUTION. (a) For purposes of this section:

(1) "Fiduciary" includes:

- (A) trustee, guardian, administrator, executor, conservator, and receiver;
- (B) any other person acting in a fiduciary capacity, but not a commercial bailee; and
- (C) an officer, manager, employee, or agent carrying on fiduciary functions on behalf of a fiduciary.

(2) "Misapply" means deal with property contrary to:

- (A) an agreement under which the fiduciary holds the property; or
- (B) a law prescribing the custody or disposition of the property.

(b) A person commits an offense if he intentionally, knowingly, or recklessly misapplies property he holds as a fiduciary or property of a financial institution in a manner that involves substantial risk of loss to the owner of the property or to a person for whose benefit the property is held.

(c) An offense under this section is:

- (1) *a Class C misdemeanor if the value of the property misapplied is less than \$20;*

(2) a Class B misdemeanor if the value of the property misapplied is \$20 or more but less than \$500;

(3) a Class A misdemeanor if the value of the property misapplied is \$500 or more but less than \$1,500 [\$200];

(4) [(2)] a state jail felony [of the third degree] if the value of the property misapplied is \$1,500 [\$200] or more but less than \$20,000 [\$10,000];

(5) [(3)] a felony of the third [second] degree if the value of the property misapplied is \$20,000 [\$10,000] or more but less than \$100,000; [or]

(6) [(4)] a felony of the second [first] degree if the value of the property misapplied is \$100,000 or more but less than \$200,000; or

(7) a felony of the first degree if the value of the property misapplied is \$200,000 or more.

Sec. 32.46. SECURING EXECUTION OF DOCUMENT BY DECEPTION. (a) A person commits an offense if, with intent to defraud or harm any person, he, by deception, causes another to sign or execute any document affecting property or service or the pecuniary interest of any person.

(b) An offense under this section is a:

(1) Class C misdemeanor if the value of the property, service, or pecuniary interest is less than \$20;

(2) Class B misdemeanor if the value of the property, service, or pecuniary interest is \$20 or more but less than \$500;

(3) Class A misdemeanor if the value of the property, service, or pecuniary interest is \$500 or more but less than \$1,500;

(4) state jail felony if the value of the property, service, or pecuniary interest is \$1,500 or more but less than \$20,000;

(5) felony of the third degree if the value of the property, service, or pecuniary interest is \$20,000 or more but less than \$100,000;

(6) felony of the second degree if the value of the property, service, or pecuniary interest is \$100,000 or more but less than \$200,000; or

(7) felony of the first degree if the value of the property, service, or pecuniary interest is \$200,000 or more [felony of the third degree].

Sec. 32.47. FRAUDULENT DESTRUCTION, REMOVAL, OR CONCEALMENT OF WRITING. (a) A person commits an offense if, with intent to defraud or harm another, he destroys, removes, conceals, alters, substitutes, or otherwise impairs the verity, legibility, or availability of a writing, other than a governmental record.

(b) For purposes of this section, "writing" includes:

(1) printing or any other method of recording information;

(2) money, coins, tokens, stamps, seals, credit cards, badges, trademarks;

(3) symbols of value, right, privilege, or identification; and

(4) labels, price tags, or markings on goods.

(c) Except as provided in Subsection (d) [of this section], an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a state jail felony [of the third degree] if the writing:

(1) is a will or codicil of another, whether or not the maker is alive or dead and whether or not it has been admitted to probate; or

(2) is a deed, mortgage, deed of trust, security instrument, security agreement, or other writing for which the law provides public recording or filing, whether or not the writing has been acknowledged.

Sec. 32.48. ENDLESS CHAIN SCHEME. (a) For the purposes of this section:

(1) "Endless chain" means any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation

for introducing one or more additional persons into participation in the scheme or for the chance to receive compensation when a person introduced by the participant introduces a new participant.

(2) "Compensation" does not mean or include payment based on sales made to persons who are not participants in the scheme and who are not purchasing in order to participate in the scheme.

(b) A person commits an offense if he contrives, prepares, sets up, proposes, operates, promotes, or participates in an endless chain.

(c) An offense under this section is a Class B misdemeanor.

~~[Sec. 32.49. ISSUANCE OF CHECKS PRINTED ON RED PAPER. (a) A person commits an offense if he issues a check or similar sight order for payment of money printed on dark red or other colored paper that prevents reproduction of an image of the order by microfilming or other similar reproduction equipment, knowing that the colored paper prevents reproduction.~~

~~(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.50. DEBIT CARD ABUSE. (a) For purposes of this section:~~

~~(1) "Cardholder" means the person named on the face of a debit card to whom or for whose benefit the card is issued.~~

~~(2) "Debit card" means an identification card, plate, coupon, book, number, or any other device authorizing a designated person or bearer to communicate a request to an unmanned teller machine or a customer convenience terminal. It includes the number or description of the device if the device itself is not produced at the time of ordering or obtaining the benefit.~~

~~(3) "Expired debit card" means a card bearing as its expiration date a date that has passed.~~

~~(4) "Unmanned teller machine" means a machine, other than a telephone, capable of being operated solely by a customer, by which a customer may communicate to a financial institution a request to withdraw a benefit for himself or for another directly from the customer's account or from the customer's account pursuant to a line of credit previously authorized by the institution for the customer.~~

~~(5) "Customer convenience terminal" means a device which is a particular kind of unmanned teller machine (i.e., the use of which does not involve personnel of a financial institution).~~

~~(b) A person commits an offense if:~~

~~(1) with intent to obtain a benefit for himself or for another fraudulently, he intentionally or knowingly presents or uses a debit card with knowledge that:~~

~~[(A) the card, whether or not expired, has not been issued to him and is not used with the effective consent of the cardholder; or~~

~~[(B) the card has expired or has been revoked or canceled;~~

~~(2) with intent to obtain a benefit for himself or for another, he intentionally or knowingly uses a fictitious debit card or the pretended number or description of a fictitious card;~~

~~(3) he intentionally or knowingly receives a benefit for himself or for another that he knows has been obtained in violation of this section;~~

~~(4) he steals a debit card or, with knowledge that it has been stolen, receives a card with intent to use it, to sell it, or to transfer it to a person other than the issuer or the cardholder;~~

~~(5) he buys a debit card from a person who he knows is not the issuer;~~

~~(6) not being the issuer, he sells a debit card;~~

~~(7) not being the cardholder, and without the effective consent of the cardholder, he signs or writes his name or the name of another on a debit card with intent to use it; or~~

~~[(8) he possesses two or more incomplete debit cards that have not been issued to him with intent to complete them without the effective consent of the issuer. For purposes of this subdivision, a card is incomplete if part of the matter that an issuer requires to appear on the card before it can be used (other than the signature of the cardholder) has not yet been stamped, embossed, imprinted, or written on it.~~

~~[(c) It is presumed that a person who used a revoked, canceled, or expired debit card had knowledge that the card had been revoked, canceled, or expired if he had received notice of revocation, cancellation, or expiration from the issuer. For purposes of this section, notice may be either notice given orally in person or by telephone, or in writing by mail or by telegram. If written notice was sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested, addressed to the cardholder at the last address shown by the records of the issuer, it is presumed that the notice was received by the cardholder no later than five days after sent.~~

~~[(d) An offense under this section is a felony of the third degree.~~

~~[Sec. 32.51. PENALTY FOR FRAUDULENTLY OBTAINING OR DENYING WORKERS' COMPENSATION BENEFITS. (a) A person commits an offense if the person, with intent to obtain or deny payments of workers' compensation benefits under the workers' compensation laws of this state for himself or another, knowingly or intentionally;~~

~~[(1) makes a false or misleading statement;~~

~~[(2) misrepresents or conceals a material fact; or~~

~~[(3) fabricates, alters, conceals, or destroys a document other than a governmental record.~~

~~[(b) A person commits an offense if the person receives workers' compensation benefits that the person knows he is not legally entitled to receive.~~

~~[(c) An offense under Subsection (a) of this section is a Class A misdemeanor. An offense under Subsection (b) of this section is:~~

~~[(1) a Class A misdemeanor if the value of the benefits received is less than \$750;~~

~~[(2) a felony of the third degree if the value of the benefits received is \$750 or more but less than \$10,000; and~~

~~[(3) a felony of the second degree if the value of the benefits received is \$10,000 or more.~~

~~[Sec. 32.52. FRAUDULENT STATEMENT TO FINANCIAL INSTITUTION. (a) A person commits an offense if, with intent to defraud or harm a financial institution, he knowingly makes a materially false or misleading written statement to obtain or in an attempt to obtain moneys, accounts, funds, credits, assets, securities, or other property owned by, or under the custody or control of, a financial institution.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 32.53. TAXICAB FARES. (a) A person who operates a taxicab commits an offense if the person intentionally extends the distance or time for a trip beyond the distance or time necessary for the trip for the purpose of increasing the fare for the trip.~~

~~[(b) An offense under this section is a Class B misdemeanor.~~

~~[Sec. 32.54. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A person commits an offense if the person, with intent to obtain workers' compensation insurance coverage for himself or another under the workers' compensation insurance laws of this state, knowingly or intentionally;~~

~~[(1) makes a false statement;~~

~~[(2) misrepresents or conceals a material fact; or~~

~~[(3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.~~

~~[(b) An offense under Subsection (a) of this section is a felony of the third degree.~~

~~[(c) The court may order a person to pay restitution to an insurance company, the Texas workers' compensation insurance facility, or the Texas Workers' Compensation Insurance Fund if the person commits an offense under this section.~~

~~[SUBCHAPTER E. SAVINGS AND LOAN ASSOCIATIONS~~

~~[Sec. 32.71. EMBEZZLEMENT; UNAUTHORIZED ISSUANCE; FALSE ENTRY. (a) An officer, director, member of any committee, clerk, or agent of any savings and loan association in this state commits an offense if the person embezzles, abstracts, or misapplies money, funds, or credits of the association, issues or puts into circulation any warrant or other order without proper authority, issues, assigns, transfers, cancels, or delivers up any note, bond, draft, mortgage, judgment, decree, or other written instrument belonging to the association, certifies to or makes a false entry in any book, report, or statement of or to the association, with intent to deceive, injure, or defraud the association or a member of the association for the purpose of inducing any person to become a member of the association or to deceive anyone appointed to examine the affairs of the association.~~

~~[(b) A person commits an offense if the person, with intent to deceive, injure, or defraud, aids or abets any officer, member of any committee, or other person in committing any of the acts prohibited under Subsection (a).~~

~~[(c) An offense under this section is a felony punishable by imprisonment for not less than one year or more than 10 years.~~

~~[Sec. 32.72. FALSE INFORMATION; SUPPRESSING EVIDENCE. (a) Any person commits an offense if the person for the purpose of influencing the actions of an association or its employees, agents, or representatives or for the purpose of influencing the actions of The Finance Commission of Texas, the savings and loan commissioner, or employees, agents, or representatives of the Savings and Loan Department of Texas, knowingly:~~

~~[(1) removes, mutilates, destroys, or conceals a paper, book, or record of a savings and loan association or of the savings and loan commissioner or the Savings and Loan Department of Texas for the purpose of concealing a fact or suppressing evidence;~~

~~[(2) makes, passes, alters, or publishes a false, counterfeit, or forged instrument, paper, document, statement, or report to a savings and loan association or to the savings and loan commissioner or the Savings and Loan Department of Texas; or~~

~~[(3) substantially overvalues land, property, security, an asset, or income in connection with a transaction with a savings and loan association without substantiation, justification, or supporting documentation generally accepted by appraisal standards.~~

~~[(b) An offense under this section is a felony punishable by a fine of not more than \$100,000, imprisonment for not more than 10 years, or both.]~~

CHAPTER 33. COMPUTER CRIMES

Sec. 33.01. DEFINITIONS. In this chapter:

(1) "Access" means to approach, instruct, communicate with, store data in, retrieve or intercept data from, alter data or computer software in, or otherwise make use of any resource of a computer, computer system, or computer network.

(2) "Communications common carrier" means a person who owns or operates a telephone system in this state that includes equipment or facilities for the conveyance, transmission, or reception of communications and who receives compensation from persons who use that system.

(3) [(2)] "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device.

(4) [(3)] "Computer network" means the interconnection of two or more computers or computer systems by satellite, microwave, line, or other communication medium with the capability to transmit information among the computers.

(5) [(4)] "Computer program" means an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions.

(6) [(5)] "Computer security system" means the design, procedures, or other measures that the person responsible for the operation and use of a computer employs to restrict the use of the computer to particular persons or uses or that the owner or licensee of data stored or maintained by a computer in which the owner or licensee is entitled to store or maintain the data employs to restrict access to the data.

(7) [(6)] "Computer services" means the product of the use of a computer, the information stored in the computer, or the personnel supporting the computer, including computer time, data processing, and storage functions.

(8) [(7)] "Computer system" means any combination of a computer or *computer network* [computers] with the documentation, computer software, or physical facilities supporting the computer or *computer network*.

(9) [(8)] "Computer software" means a set of computer programs, procedures, and associated documentation related to the operation of a computer, computer system, or computer network.

(10) [(9)] "Computer virus" means an unwanted computer program or other set of instructions inserted into a computer's memory, operating system, or program that is specifically constructed with the ability to replicate itself or [and] to affect the other programs or files in the computer by attaching a copy of the unwanted program or other set of instructions to one or more computer programs or files.

[(10) "Damage" includes partial or total alteration, damage, or erasure of stored data, or interruption of computer services.]

(11) "Data" means a representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared in a formalized manner and is intended to be stored or processed, is being stored or processed, or has been stored or processed in a computer. Data may be embodied in any form, including but not limited to computer printouts, magnetic storage media, *laser storage media*, and punchcards, or may be stored internally in the memory of the computer.

(12) "Effective consent" includes consent by a person legally authorized to act for the owner. Consent is not effective if:

- (A) induced by deception, as defined by Section 31.01, or induced by coercion;
- (B) given by a person the actor knows is not legally authorized to act for the owner;
- (C) given by a person who by reason of youth, mental disease or defect, or intoxication is known by the actor to be unable to make reasonable property dispositions;
- (D) given solely to detect the commission of an offense; or
- (E) used for a purpose other than that for which the consent was given.

(13) [(12)] "Electric utility" has the meaning assigned by Subsection (c), Section 3, Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

(14) "Harm" includes partial or total alteration, damage, or erasure of stored data, interruption of computer services, introduction of a computer virus, or any other loss, disadvantage, or injury that might reasonably be suffered as a result of the actor's conduct.

(15) "Owner" means a person who:

- (A) has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than the actor;
- (B) has the right to restrict access to the property; or
- (C) is the licensee of data or computer software.

(16) "Property" means:

- (A) tangible or intangible personal property including a computer, computer system, computer network, computer software, or data; or
- (B) the use of a computer, computer system, computer network, computer software, or data.

Sec. 33.02. BREACH OF COMPUTER SECURITY. (a) A person commits an offense if the person *knowingly accesses a computer, computer network, or computer system*:

~~[(1) uses a computer without the effective consent of the owner of the computer or a person authorized to license access to the computer and the actor knows that there exists a computer security system intended to prevent him from making that use of the computer; or~~

~~[(2) gains access to data stored or maintained by a computer] without the effective consent of the owner [or licensee of the data and the actor knows that there exists a computer security system intended to prevent him from gaining access to that data].~~

(b) A person commits an offense if the person intentionally or knowingly gives a password, identifying code, personal identification number, debit card number, bank account number, or other confidential information about a computer security system to another person without the effective consent of the person employing the computer security system to restrict [the use of a computer or to restrict] access to a computer, computer network, computer system, or data [stored or maintained by a computer].

(c) An offense under this section is a Class A misdemeanor *unless the actor's intent is to obtain a benefit or defraud or harm another, in which event the offense is:*

(1) a state jail felony if the value of the benefit or the amount of the loss or harm is less than \$20,000; or

(2) a felony of the third degree if the value of the benefit or the amount of the loss or harm is \$20,000 or more.

(d) A person who is subject to prosecution under this section and any other section of this code may be prosecuted under either or both sections.

Sec. 33.03. ~~[HARMFUL ACCESS. (a) A person commits an offense if the person intentionally or knowingly and without authorization from the owner of the computer or a person authorized to license access to the computer:~~

~~[(1) damages, alters, or destroys a computer, computer program or software, computer system, data, or computer network;~~

~~[(2) causes a computer to interrupt or impair a government operation, public communication, public transportation, or public service providing water or gas;~~

~~[(3) uses a computer to:~~

~~[(A) tamper with government, medical, or educational records; or~~

~~[(B) receive or use records that were not intended for public dissemination to gain an advantage over business competitors;~~

~~[(4) obtains information from or introduces false information into a computer system to damage or enhance the data or credit records of a person;~~

~~[(5) causes a computer to remove, alter, erase, or copy a negotiable instrument; or~~

~~[(6) inserts or introduces a computer virus into a computer program, computer network, or computer system.~~

~~[(b) An offense under this section is a:~~

~~[(1) felony of the second degree if the value of the loss or damage caused by the conduct is \$20,000 or more;~~

~~[(2) felony of the third degree if the value of the loss or damage caused by the conduct is \$750 or more but less than \$20,000; or~~

~~[(3) Class A misdemeanor if the value of the loss or damage caused by the conduct is \$200 or more but less than \$750.~~

[Sec. 33.04.] DEFENSES. It is an affirmative defense to prosecution under *Section* [Sections] 33.02 [and 33.03 of this code] that the actor was an officer, employee, or agent of a communications common carrier or electric utility and committed the proscribed act or acts in the course of employment while engaged in an activity that is a necessary incident to the rendition of service or to the protection of the rights or property of the communications common carrier or electric utility.

Sec. 33.04 [33.05]. ASSISTANCE BY ATTORNEY GENERAL. The attorney general, if requested to do so by a prosecuting attorney, may assist the prosecuting attorney in the investigation or prosecution of an offense under this chapter or of any other offense involving the use of a computer.

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

Sec. 36.01. DEFINITIONS. In this chapter:

(1) ~~["Coercion" means a threat, however communicated;~~

~~[(A) to commit any offense;~~

~~[(B) to inflict bodily injury on the person threatened or another;~~

~~[(C) to accuse any person of any offense;~~

~~[(D) to expose any person to hatred, contempt, or ridicule;~~

~~[(E) to harm the credit, business repute, or pecuniary interest of any person; or~~

~~[(F) to unlawfully take or withhold action as a public servant, or to cause a public servant to unlawfully take or withhold action.~~

[(2)] "Custody" means:

(A) detained or under arrest by a peace officer; or

(B) under restraint by a public servant pursuant to an order of a court.

~~[(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.]~~

(2) [(4)] "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(3) [(5)] "Benefit" means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

(4) [(6)] "Vote" means to cast a ballot in an election regulated by law.

Sec. 36.02. BRIBERY. (a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding;

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official; or

(4) any benefit that is a political contribution as defined by Title 15, Election Code, or that is an expenditure made and reported in accordance with Chapter 305, Government Code, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit; notwithstanding any rule of evidence or jury instruction allowing factual inferences in the absence of certain evidence, direct evidence of the express agreement shall be required in any prosecution under this subdivision.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) It is no defense to prosecution under this section that the benefit is not offered or conferred or that the benefit is not solicited or accepted until after:

(1) the decision, opinion, recommendation, vote, or other exercise of discretion has occurred; or

(2) the public servant ceases to be a public servant.

(d) It is an exception to the application of Subdivisions (1), (2), and (3) of Subsection (a) [~~of this section~~] that the benefit is a political contribution [~~accepted~~] as defined by Title 15, Election Code, *or an expenditure made and reported in accordance with Chapter 305, Government Code.*

(e) An offense under this section is a felony of the second degree.

Sec. 36.03. COERCION OF PUBLIC SERVANT OR VOTER. (a) A person commits an offense if by means of coercion he:

(1) influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty or influences or attempts to influence a public servant to violate the public servant's known legal duty; or

(2) influences or attempts to influence a voter not to vote or to vote in a particular manner.

(b) An offense under this section is a Class A misdemeanor unless the coercion is a threat to commit a felony, in which event it is a felony of the third degree.

(c) It is an exception to the application of Subsection (a)(1) of this section that the person who influences or attempts to influence the public servant is a member of the governing body of a governmental entity, and that the action that influences or attempts to influence the public servant is an official action taken by the member of the governing body. For the purposes of this subsection, the term "official action" includes deliberations by the governing body of a governmental entity.

Sec. 36.04. IMPROPER INFLUENCE. (a) A person commits an offense if he privately addresses a representation, entreaty, argument, or other communication to any public servant who exercises or will exercise official discretion in an adjudicatory proceeding with an intent to influence the outcome of the proceeding on the basis of considerations other than those authorized by law.

(b) For purposes of this section, "adjudicatory proceeding" means any proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.05. TAMPERING WITH WITNESS. (a) A person commits an offense if, with intent to influence the witness, he offers, confers, or agrees to confer any benefit on a witness or prospective witness in an official proceeding or coerces a witness or prospective witness in an official proceeding:

(1) to testify falsely;

(2) to withhold any testimony, information, document, or thing;

(3) to elude legal process summoning him to testify or supply evidence; [~~or~~]

(4) to absent himself from an official proceeding to which he has been legally summoned;
or

(5) *to abstain from, discontinue, or delay the prosecution of another witness.*

(b) A witness or prospective witness in an official proceeding commits an offense if he knowingly solicits, accepts, or agrees to accept any benefit on the representation or understanding that he will do any of the things specified in Subsection (a) [~~of this section~~].

(c) *It is a defense to prosecution under Subsection (a)(5) that the benefit received was:*

(1) *reasonable restitution for damages suffered by the complaining witness as a result of the offense; and*

(2) *a result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.*

(d) An offense under this section is a state jail felony [~~of the third degree~~].

Sec. 36.06. **OBSTRUCTION OR RETALIATION.** (a) A person commits an offense if he intentionally or knowingly harms or threatens to harm another by an unlawful act:

(1) in retaliation for or on account of the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or *who the actor knows intends to report* the occurrence of a crime; or

(2) *to prevent or delay the service of another as a public servant, witness, prospective witness, informant, or a person who has reported or who the actor knows intends to report the occurrence of a crime.*

(b) For purposes of this section, "informant" means a person who has communicated information to the government in connection with any governmental function.

(c) An offense under this section is a felony of the third degree.

Sec. 36.07. **ACCEPTANCE OF HONORARIUM.** (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses ~~[permitted under Section 305.025(b)(2), Government Code,]~~ in connection with a conference or similar event *in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory*, or from accepting meals in connection with such an event.

(c) An offense under this section is a Class A misdemeanor.

Sec. 36.08. **GIFT TO PUBLIC SERVANT BY PERSON SUBJECT TO HIS JURISDICTION.** (a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) ~~[of this code]~~ does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) *A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.*

Sec. 36.09. OFFERING GIFT TO PUBLIC SERVANT. (a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Sec. 36.10. NON-APPLICABLE. (a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) ~~[of this code]~~ do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

(3) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code; ~~or~~

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) *an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or*

(7) *an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.*

(b) Section 36.08 (Gift to Public Servant) ~~[of this code]~~ does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) ~~[of this code]~~ does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

CHAPTER 37. PERJURY AND OTHER FALSIFICATION

Sec. 37.01. DEFINITIONS. In this chapter:

(1) "Governmental record" means:

(A) anything belonging to, received by, or kept by government for information;

(B) anything required by law to be kept by others for information of government; or

(C) a license, certificate, permit, seal, title, or similar document issued by government.

(2) ~~["Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.~~

~~[(3)]~~ "Statement" means any representation of fact.

Sec. 37.02. PERJURY. (a) A person commits an offense if, with intent to deceive and with knowledge of the statement's meaning:

(1) he makes a false statement under oath or swears to the truth of a false statement previously made[;] and

~~[(2)] the statement is required or authorized by law to be made under oath; or~~

~~(2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code.~~

(b) An offense under this section is a Class A misdemeanor.

Sec. 37.03. AGGRAVATED PERJURY. (a) A person commits an offense if he commits perjury as defined in Section 37.02 ~~[of this code]~~, and the false statement:

(1) is made during or in connection with an official proceeding; and

(2) is material.

(b) An offense under this section is a felony of the third degree.

Sec. 37.04. MATERIALITY. (a) A statement is material, regardless of the admissibility of the statement under the rules of evidence, if it could have affected the course or outcome of the official proceeding.

(b) It is no defense to prosecution under Section 37.03 ~~[of this code]~~ (Aggravated Perjury) that the declarant mistakenly believed the statement to be immaterial.

(c) Whether a statement is material in a given factual situation is a question of law.

Sec. 37.05. RETRACTION. It is a defense to prosecution under Section 37.03 ~~[of this code]~~ (Aggravated Perjury) that the actor retracted his false statement:

(1) before completion of the testimony at the official proceeding; and

(2) before it became manifest that the falsity of the statement would be exposed.

Sec. 37.06. INCONSISTENT STATEMENTS. An information or indictment for perjury under Section 37.02 ~~[of this code]~~ or aggravated perjury under Section 37.03 ~~[of this code]~~ that alleges that the declarant has made statements under oath, both of which cannot be true, need not allege which statement is false. At the trial the prosecution need not prove which statement is false.

Sec. 37.07. IRREGULARITIES NO DEFENSE. (a) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) ~~[of this code]~~ that the oath was administered or taken in an irregular manner, or that there was some irregularity in the appointment or qualification of the person who administered the oath.

(b) It is no defense to prosecution under Section 37.02 (Perjury) or 37.03 (Aggravated Perjury) ~~[of this code]~~ that a document was not sworn to if the document contains a recital that it was made under oath, the declarant was aware of the recital when he signed the document, and the document contains the signed jurat of a public servant authorized to administer oaths.

Sec. 37.08. FALSE REPORT TO PEACE OFFICER. (a) A person commits an offense if, *with intent to deceive, he knowingly makes a false statement to a peace officer conducting a criminal investigation and the statement is material to the investigation* ~~[he:~~

~~[(1) reports to a peace officer an offense or incident within the officer's concern, knowing that the offense or incident did not occur; or~~

~~[(2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident].~~

(b) An offense under this section is a Class B misdemeanor.

Sec. 37.09. TAMPERING WITH OR FABRICATING PHYSICAL EVIDENCE. (a) A person commits an offense if, knowing that an investigation or official proceeding is pending or in progress, he:

(1) alters, destroys, or conceals any record, document, or thing with intent to impair its verity, legibility, or availability as evidence in the investigation or official proceeding; or

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceeding.

(b) This section shall not apply if the record, document, or thing concealed is privileged or is the work product of the parties to the investigation or official proceeding.

(c) An offense under this section is a felony of the third degree.

Sec. 37.10. TAMPERING WITH GOVERNMENTAL RECORD. (a) A person commits an offense if he:

(1) knowingly makes a false entry in, or false alteration of, a governmental record;

(2) makes, presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine governmental record;

(3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; ~~or~~

(4) possesses, sells, or offers to sell a governmental record or a blank governmental record form with intent that it be used unlawfully; ~~or~~

(5) ~~[(4)]~~ makes, presents, or uses a governmental record with knowledge of its falsity; ~~or~~

(6) ~~[(5)]~~ possesses, sells, or offers to sell a governmental record or a blank governmental record form with knowledge that it was obtained unlawfully.

(b) It is an exception to the application of Subsection (a)(3) ~~[of this section]~~ that the governmental record is destroyed pursuant to legal authorization. With regard to the destruction of a local government record, legal authorization includes compliance with the provisions of Subtitle C, Title 6, Local Government Code.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a Class A misdemeanor unless the actor's intent is to defraud or harm another, in which event the offense is a *state jail* felony ~~[of the third degree]~~.

(d) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the governmental record was a license, certificate, permit, seal, title, or similar document issued by government, unless the actor's intent is to defraud or harm another, in which event the offense is a felony of the second degree.

(e) It is an affirmative defense to prosecution for possession under Subsection (a)(6) ~~[(a)(5) of this section]~~ that the possession occurred in the actual discharge of official duties as a public servant.

(f) *It is a defense to prosecution under Subsection (a)(1), (a)(2), or (a)(5) that the false entry or false information could have no effect on the government's purpose for requiring the governmental record.*

(g) A person is presumed to intend to defraud or harm another if the person acts with respect to two or more of the same type of governmental records or blank governmental record forms and if each governmental record or blank governmental record form is a license, certificate, permit, seal, title, or similar document issued by government.

Sec. 37.11. IMPERSONATING PUBLIC SERVANT. (a) A person commits an offense if he impersonates a public servant with intent to induce another to submit to his pretended official authority or to rely on his pretended official acts.

(b) An offense under this section is a Class A misdemeanor unless the person impersonated a peace officer, in which event it is a felony of the third degree.

Sec. 37.12. FALSE IDENTIFICATION AS PEACE OFFICER; MISREPRESENTATION OF PROPERTY. (a) A person commits an offense if:

(1) the person makes, provides to another person, or possesses a card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency that identifies a person as a peace officer or a reserve law enforcement officer; and

(2) the person who makes, provides, or possesses the item bearing the insignia knows that the person so identified by the item is not *commissioned as a* ~~[certified or licensed by the Commission on Law Enforcement Officer Standards and Education in the capacity of]~~ peace officer or reserve law enforcement officer *as indicated on the item.*

(b) It is a defense to prosecution under this section that:

(1) the card, document, badge, insignia, shoulder emblem, or other item bearing an insignia of a law enforcement agency clearly identifies the person as an honorary or junior peace officer or reserve law enforcement officer, or as a member of a junior posse;

(2) the person identified as a peace officer or reserve law enforcement officer by the item bearing the insignia was *commissioned* [~~certified or licensed~~] in that capacity when the item was made; or

(3) the item was used or intended for use exclusively for decorative purposes or in an artistic or dramatic presentation.

(c) In this section, "reserve law enforcement officer" has the same meaning as is given that term in Section 415.001, *Government Code* [6, Chapter 546, ~~Acts of the 59th Legislature, Regular Session, 1965 (Article 4413(29aa), Vernon's Texas Civil Statutes)~~].

(d) A person commits an offense if the person intentionally or knowingly misrepresents an object as property belonging to a law enforcement agency.

(e) An offense under this section is a Class B misdemeanor.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Sec. 38.01. DEFINITIONS. In this chapter:

(1) [~~"Complaining witness" means the victim of a crime or a person who signs a criminal complaint.~~]

[(2)] "Custody" means [~~detained or~~] under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(2) [(3)] "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period *or leave that is part of an intermittent sentence*, but does not include a violation of conditions of *community supervision* [~~probation~~] or parole.

(3) [(4)] "Economic benefit" means anything reasonably regarded as an economic gain or advantage, *including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.*

(4) "Finance" means *to provide funds or capital or to furnish with necessary funds* [(5) ~~"Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes).~~]

(5) "Fugitive from justice" means *a person for whom a valid arrest warrant has been issued.*

(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "Invest funds" means *to commit money to earn a financial return* [~~"Hospital" means a general hospital or special hospital as defined by Chapter 241, Health and Safety Code.~~]

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(9) [~~"Official proceeding" means:~~]

[(A) ~~a proceeding before a magistrate, court, or grand jury of this state;~~]

[(B) ~~a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;~~]

[(C) ~~a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or~~]

[(D) ~~a proceeding that otherwise is made expressly subject to this chapter.~~]

[(10)] "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(10) "Public media" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not prohibited by Section 38.12(d).

(11) "Solicit employment" means to communicate in person or by telephone or written communication with a prospective client ~~[claimant]~~ or ~~[defendant or with]~~ a member of the prospective client's ~~[claimant's or defendant's]~~ family concerning legal representation arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing legal problem of the prospective client, for the purpose of providing legal representation to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated ~~[communicating]~~ by a family member of the person receiving a communication, a communication ~~[communicating]~~ by an attorney who has a prior or existing attorney-client relationship with the person receiving the communication, or communication by an attorney for ~~[communicating with]~~ a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, ~~[laymen]~~ to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. The term does not include an advertisement by an attorney through public media.

Sec. 38.02. FAILURE TO IDENTIFY. (a) A person commits an offense if he intentionally refuses to ~~[report or]~~ give his name, residence address, or date of birth to a peace officer who has lawfully arrested the person and requested the information.

(b) A person commits an offense if he *intentionally* ~~[reports or]~~ gives a false or fictitious name, residence address, or date of birth to a peace officer who has:

(1) lawfully arrested the person;

(2) lawfully detained the person; or

(3) requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense.

(c) ~~[In this section, "fugitive from justice" means a person for whom a valid arrest warrant has been issued by a magistrate of this state, if the warrant has not been executed.]~~

~~[(d)]~~ Except as provided by Subsection (d) ~~[(e) of this section]~~, an offense under this section is a Class C misdemeanor.

~~(d) [(e)]~~ If it is shown on the trial of an offense under this section that the defendant was a fugitive from justice at the time of the offense ~~[or that the defendant has been previously convicted of an offense under this section]~~, the offense is a Class B misdemeanor.

Sec. 38.03. RESISTING ARREST, SEARCH, OR TRANSPORTATION. (a) A person commits an offense if he intentionally prevents or obstructs a person he knows is a peace officer or a person acting in a peace officer's presence and at his direction from effecting an arrest, search, or transportation of the actor or another by using force against the peace officer or another.

(b) It is no defense to prosecution under this section that the arrest or search was unlawful.

(c) Except as provided in Subsection (d) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if the actor uses a deadly weapon to resist the arrest or search.

Sec. 38.04. EVADING ARREST OR DETENTION. (a) A person commits an offense if he intentionally flees from a person he knows is a peace officer attempting *lawfully* to arrest [him] or detain him [for the purpose of questioning or investigating possible criminal activity].

(b) ~~It is an exception to the application of this section that the attempted arrest is unlawful or the detention is without reasonable suspicion to investigate.~~

~~[(c) It is presumed that the actor recklessly engaged in conduct placing another in imminent danger of serious bodily injury under Subsection (d) of this section if the actor operated a motor vehicle while intoxicated during the commission of the offense. In this subsection, "intoxicated" has the meaning assigned that term by Article 67011-1, Revised Statutes.~~

[(d)] An offense under this section is a Class B misdemeanor, except that the offense is:

[(1) a Class A misdemeanor if the actor, during the commission of the offense, recklessly engaged in conduct that placed another in imminent danger of serious bodily injury; or

[(2)] a felony of the third degree if a peace officer suffers serious bodily injury or death from any cause other than an assault or homicide by the actor as a direct result of an attempt by the officer to apprehend the actor while the actor is in flight.

Sec. 38.05. HINDERING APPREHENSION OR PROSECUTION. (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, he:

(1) harbors or conceals the other;

(2) provides or aids in providing the other with any means of avoiding arrest or effecting escape; or

(3) warns the other of impending discovery or apprehension.

(b) It is a defense to prosecution under Subsection (a)(3) ~~[of this section]~~ that the warning was given in connection with an effort to bring another into compliance with the law.

(c) An offense under this section is a Class A misdemeanor, except that the offense is a felony of the third degree if the person who is harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony and the person charged under this section knew that the person they harbored, concealed, provided with a means of avoiding arrest or effecting escape, or warned of discovery or apprehension is under arrest for, charged with, or convicted of a felony.

Sec. 38.06. ~~COMPOUNDING.~~ (a) ~~A complaining witness commits an offense if, after criminal proceedings have been instituted, he solicits, accepts, or agrees to accept any benefit in consideration of abstaining from, discontinuing, or delaying the prosecution of another for an offense.~~

~~[(b) It is a defense to prosecution under this section that the benefit received was:~~

~~[(1) reasonable restitution for damages suffered by the complaining witness as a result of the offense; and~~

~~[(2) the result of an agreement negotiated with the assistance or acquiescence of an attorney for the state who represented the state in the case.~~

~~[(c) An offense under this section is a Class A misdemeanor.~~

[Sec. 38.07.] ESCAPE. (a) A person commits an offense if he escapes from custody when he is:

(1) under arrest for, charged with, or convicted of an offense; or

(2) in custody pursuant to a lawful order of a court.

(b) Except as provided in Subsections (c), [and] (d), and (e) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(c) An offense under this section is a felony of the third degree if the actor:

(1) is under arrest for, charged with, or convicted of a felony; or

(2) is confined in a *secure correctional facility* ~~[penal institution]~~.

(d) An offense under this section is a felony of the second degree if the actor ~~[used or threatened to use a deadly weapon]~~ to effect his escape *causes bodily injury*.

(e) An offense under this section is a felony of the first degree if to effect his escape the actor:

- (1) *causes serious bodily injury; or*
- (2) *uses or threatens to use a deadly weapon.*

Sec. 38.07 [38.08]. PERMITTING OR FACILITATING ESCAPE. (a) An official or employee of a *correctional facility* ~~[an institution that is responsible for maintaining persons in custody]~~ commits an offense if he ~~[intentionally]~~ knowingly ~~[or recklessly]~~ permits or facilitates the escape of a person in custody.

(b) A person commits an offense if he ~~[intentionally or]~~ knowingly causes or facilitates the escape of one who is in custody pursuant to:

- (1) an allegation or adjudication of delinquency; or
- (2) ~~[a statutory procedure authorizing]~~ involuntary commitment for mental illness under Subtitle C, Title 7, Health and Safety Code, or for chemical dependency under Chapter 462, Health and Safety Code ~~[, alcoholism, or drug addiction]~~.

(c) Except as provided in Subsections ~~[Subsection]~~ (d) and (e) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(d) An offense under this section is a felony of the third degree if:

~~[(1)]~~ the person in custody:

- (1) was under arrest for, charged with, or convicted of a felony; or
- (2) ~~[the person in custody]~~ was confined in a *correctional facility other than a secure correctional facility after conviction of a felony*.

(e) An offense under this section is a felony of the second degree if:

(1) ~~[penal institution]~~;

~~[(3)]~~ the actor or the person in custody used or threatened to use a deadly weapon to effect the escape; or

(2) ~~[(4)]~~ the person in custody was confined in a *secure correctional facility after conviction of a felony* ~~[offense under Subsection (a) of this section was committed intentionally]~~.

Sec. 38.08 [38.09]. EFFECT OF UNLAWFUL CUSTODY. It is no defense to prosecution under Section 38.06 [38.07 (Escape)] or 38.07 ~~[38.08 (Facilitating Escape) of this code]~~ that the custody was unlawful.

Sec. 38.09 [38.10]. IMPLEMENTS FOR ESCAPE. (a) A person commits an offense if, with intent to facilitate escape, he introduces into a *correctional facility* ~~[penal institution]~~, or provides a *person in custody* or an inmate with, a deadly weapon or anything that may be useful for escape.

(b) An offense under this section is a felony of the third degree unless the actor introduced or provided a deadly weapon, in which event the offense is a felony of the second degree.

Sec. 38.10 [38.11]. BAIL JUMPING AND FAILURE TO APPEAR. (a) A person lawfully released from custody, with or without bail, on condition that he subsequently appear commits an offense if he intentionally or knowingly fails to appear in accordance with the terms of his release.

(b) *It is a defense to prosecution under this section that the appearance was incident to community supervision, parole, or an intermittent sentence* ~~[This section does not apply to appearances incident to probation or parole]~~.

(c) It is a defense to prosecution under this section that the actor had a reasonable excuse for his failure to appear in accordance with the terms of his release.

(d) Except as provided in Subsections (e) and (f) ~~[of this section]~~, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a Class C misdemeanor if the offense for which the actor's appearance was required is punishable by fine only.

(f) An offense under this section is a felony of the third degree if the offense for which the actor's appearance was required is classified as a felony.

~~Sec. 38.11 [38.111. FAILURE TO RETURN TO CUSTODY FOLLOWING WORK RELEASE. (a) A person serving a sentence under Section 5 or 6, Article 42.03, Code of Criminal Procedure, commits an offense if, having been released from custody as provided by either of those sections, he fails to return to custody as required under the terms of his sentence.~~

~~(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 38.112]. PROHIBITED SUBSTANCES IN CORRECTIONAL FACILITY OR ON PROPERTY OF TEXAS DEPARTMENT OF CRIMINAL JUSTICE [FACILITIES]. (a) A person commits an offense if the person provides an alcoholic beverage, controlled substance, or dangerous drug to an inmate of a *correctional facility* [municipal or county jail], except on the prescription of a physician.~~

~~(b) A person commits an offense if the person takes an alcoholic beverage, [a] controlled substance, or dangerous drug into a *correctional facility*, [municipal or county jail or a *correctional facility* authorized by Subchapter F, Chapter 351, Local Government Code] except for delivery to a *correctional facility* [jail or *correctional facility*] warehouse, pharmacy, or physician.~~

~~(c) [A person commits an offense if the person provides an alcoholic beverage, controlled substance, or dangerous drug to an inmate of the institutional division, except on the prescription of a physician.~~

~~[(d)] A person commits an offense if the person takes a controlled substance or dangerous drug on property owned, used, or controlled by the Texas Department of Criminal Justice [into a *correctional facility* authorized by Chapter 495, Government Code, or into the confines of property owned by the institutional division and used or occupied by inmates], except for delivery to a [an *institutional division* or *correctional facility*] warehouse, pharmacy, or physician on property owned, used, or controlled by the department.~~

~~(d) [(e)] A person commits an offense if the person possesses a controlled substance or dangerous drug while on property owned, used, or controlled by the Texas Department of Criminal Justice [in the confines of property belonging to the institutional division].~~

~~(e) [(f)] It is an affirmative defense to prosecution under Subsection (d) [(e)] of this section that the person possessed the controlled substance or dangerous drug pursuant to a prescription issued by a practitioner or while delivering the substance or drug to a [an *institutional division*] warehouse, pharmacy, or physician on property owned, used, or controlled by the department.~~

~~(f) [(g)] In this section:~~

~~(1) ["Alcoholic beverage" has the meaning assigned by Section 1.04(1), Alcoholic Beverage Code.~~

~~[(2) "Controlled substance" has the meaning assigned by Section 481.002, Health and Safety Code.~~

~~[(3) "Dangerous drug" has the meaning assigned by Section 483.001, Health and Safety Code.~~

~~[(4) "Institutional division" means the institutional division of the Texas Department of Criminal Justice.~~

~~[(5)] "Practitioner" has the meaning assigned by Section 481.002, Health and Safety Code.~~

~~[(6)] "Prescription" has the meaning assigned by Section 481.002, Health and Safety Code.~~

~~(g) [(h)] An offense under this section is a felony of the third degree.~~

~~(h) Notwithstanding Section 15.01(d), if a person commits the offense of criminal attempt to commit an offense under Subsection (a) or (b), the offense committed under Section 15.01 is a felony of the third degree.~~

~~Sec. 38.113. UNAUTHORIZED ABSENCE FROM COMMUNITY CORRECTIONS FACILITY. (a) A person commits an offense if the person is required as a condition of~~

probation to submit to a period of detention or treatment in a community corrections facility and the person fails to report to or leaves the facility without the approval of the court, the community supervision and corrections department supervising the person, or the director of the facility.

(b) An offense under this section is a state jail felony.

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain an economic benefit *the person* ~~for himself, he~~:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain legal representation from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

(b) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

(2) knowingly:

(A) finances or invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a); or

(B) accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a).

(c) It is an exception to prosecution under Subsection (a) or (b) that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

(d) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state;

(2) with the intent to obtain professional employment for himself or for another, sends or knowingly permits to be sent to an individual who has not sought the person's employment, legal representation, advice, or care a written communication that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the accident or disaster occurred;

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) concerns an arrest of or issuance of a summons to the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the arrest or issuance of the summons occurred;

(D) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication is addressed is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication was mailed;

(E) is sent or permitted to be sent by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be contacted by or receive communications concerning employment;

(F) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(G) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(E), a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) is a felony of the third degree.

(g) Except as provided by Subsection (h), an offense under Subsection (d) is a Class A misdemeanor.

(h) An offense under Subsection (d) is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d).

~~[(1) institutes any suit or claim in which he knows he has no interest;~~

~~[(2) institutes any suit or claim that he knows is false;~~

~~[(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or~~

~~[(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.~~

~~[(b) Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.~~

~~[(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.~~

~~[(d) An offense under Subsection (a)(3) or (a)(4) of this section is a felony of the third degree if it is shown on the trial of the offense that:~~

~~[(1) the defendant has previously been convicted under Subsection (a)(3) or (a)(4) of this section; and~~

~~[(2) the solicitation is performed in whole or in part:~~

~~[(A) in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;~~

~~[(B) by using a person who is an employee of:~~

~~[(i) this state;~~

~~[(ii) a political subdivision of this state, including a county, municipality, or special purpose district or authority; or~~

~~[(iii) a hospital or funeral establishment; or~~

~~[(C) by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.]~~

(i) [(e)] Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.

Sec. 38.13. **HINDERING PROCEEDINGS BY DISORDERLY CONDUCT.** (a) A person commits an offense if he intentionally hinders an official proceeding by noise or violent or tumultuous behavior or disturbance.

(b) A person commits an offense if he recklessly hinders an official proceeding by noise or violent or tumultuous behavior or disturbance and continues after explicit official request to desist.

(c) An offense under this section is a Class A misdemeanor.

Sec. 38.14. **[PREVENTING EXECUTION OF CIVIL PROCESS.]** (a) A person commits an offense if he intentionally or knowingly prevents the execution of any process in a civil cause.

~~[(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.~~

~~[(c) An offense under this section is a Class C misdemeanor.~~

~~[Sec. 38.15. TAMPERING WITH DEVICES DESIGNED TO PREVENT DRIVING WHILE INTOXICATED. (a) In this section, "device" means a device approved by the Department of Public Safety under Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), that makes impractical the operation of a motor vehicle if ethyl alcohol is detected in the breath of the operator.~~

~~[(b) A person commits an offense if the person intentionally or knowingly, for the purpose of allowing a person who is subject to a condition of probation under Section 6f(b), Article 42.12, Code of Criminal Procedure, or who is subject to driver's license restrictions under Section 23A(f) or 25(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), to operate a motor vehicle whether or not the person is intoxicated:~~

~~[(1) tampers with a device; or~~

~~[(2) introduces or allows to be introduced into the device any substance other than the deep lung air of the probationer or restricted operator.~~

~~[(c) An offense under this section is a Class B misdemeanor.~~

~~[Sec. 38.16. INJURY TO OR INTERFERENCE WITH ANIMAL UNDER SUPERVISION OF PEACE OFFICER OR DEPARTMENT OF CORRECTIONS EMPLOYEE. (a) A person commits an offense if, knowing that a dog, horse, or other animal is under the supervision of a peace officer, corrections officer, or jailer and is being used for law enforcement, corrections, prison or jail security, or investigative purposes, the person knowingly, intentionally, or recklessly:~~

~~[(1) interferes with the animal; or~~

~~[(2) injures the animal.~~

~~[(b) An offense under this section is a Class A misdemeanor.~~

~~[Sec. 38.17.] TAKING OR ATTEMPTING TO TAKE WEAPON FROM PEACE OFFICER. (a) In this section, "firearm" has the meanings assigned by Section 46.01 [of this code].~~

~~(b) A person commits an offense if the person intentionally or knowingly and with force takes or attempts to take from a peace officer the officer's firearm, *nightstick*, or *personal protection chemical dispensing device* with the intention of harming the officer or a third person.~~

~~(c) The actor is presumed to have known that the peace officer was a peace officer if the officer was wearing a distinctive uniform or badge indicating his employment, or if the officer identified himself as a peace officer.~~

~~(d) It is a defense to prosecution under this section that the defendant took or attempted to take the weapon from a peace officer who was using force against the defendant or another in excess of the amount of force permitted by law.~~

~~(e) An offense under this section is a *state jail* felony [of the third degree].~~

~~Sec. 38.15 [38.18]. INTERFERENCE WITH PUBLIC DUTIES [OF PUBLIC SERVANTS]. (a) A person commits an offense if the person [intentionally, knowingly, recklessly, or] with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with:~~

~~(1) a peace officer while the peace officer is performing a duty or exercising authority imposed or granted by law;~~

~~(2) a person who is employed to provide emergency medical services including the transportation of ill or injured persons while the person is performing that duty; [or]~~

~~(3) a fire fighter, while the fire fighter is fighting a fire or investigating the cause of a fire;~~

~~(4) an animal under the supervision of a peace officer, corrections officer, or jailer, if the person knows the animal is being used for law enforcement, corrections, prison or jail security, or investigative purposes; or~~

(5) the transmission of a communication over a citizen's band radio channel, the purpose of which communication is to inform or inquire about an emergency.

(b) An offense under this section is a Class B misdemeanor.

(c) It is a defense to prosecution under Subsection (a)(1) [~~of this section~~] that the conduct engaged in by the defendant was intended to warn a person operating a motor vehicle of the presence of a peace officer who was enforcing the provisions of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).

(d) It is a defense to prosecution under this section that the interruption, disruption, impediment, or interference alleged consisted of speech only.

(e) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.

CHAPTER 39. ABUSE OF OFFICE

Sec. 39.01. **DEFINITIONS.** *In this chapter:*

(1) "Law relating to a public servant's office or employment" means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly:

- (A) imposes a duty on the public servant; or
- (B) governs the conduct of the public servant.

(2) "Misuse" means to deal with property contrary to:

- (A) an agreement under which the public servant holds the property;
- (B) a contract of employment or oath of office of a public servant;
- (C) a law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- (D) a limited purpose for which the property is delivered or received.

Sec. 39.02. **ABUSE OF OFFICIAL CAPACITY [MISCONDUCT].** (a) A public servant commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he intentionally or knowingly:

- (1) violates a law relating to the public servant's [his] office or employment; or
- (2) misuses government property, services, personnel, or [misapplies] any other thing of value belonging to the government that has come into the public servant's [his] custody or possession by virtue of the public servant's [his] office or employment.

(b) An offense under Subsection (a)(1) [~~of this section~~] is a Class A misdemeanor.

(c) An offense under Subsection (a)(2) [~~of this section~~] is:

- (1) a Class C misdemeanor if the value of the use of the thing *misused* [misapplied] is less than \$20;
- (2) a Class B misdemeanor if the value of the use of the thing *misused* [misapplied] is \$20 or more but less than \$500 [\$200];
- (3) a Class A misdemeanor if the value of the use of the thing *misused* [misapplied] is \$500 [\$200] or more but less than \$1,500 [\$750];
- (4) a state jail felony [~~of the third degree~~] if the value of the use of the thing *misused* [misapplied] is \$1,500 [\$750] or more but less than \$20,000;
- (5) a felony of the third degree if the value of the use of the thing *misused* is \$20,000 or more but less than \$100,000; [and]
- (6) [(5)] a felony of the second degree if the value of the use of the thing *misused* [misapplied] is \$100,000 [\$20,000] or more but less than \$200,000; or

(7) *a felony of the first degree if the value of the use of the thing misused is \$200,000 or more.*

(d) *A discount or award given for travel, such as frequent flyer miles, rental car or hotel discounts, or food coupons, are not things of value belonging to the government for purposes of this section due to the administrative difficulty and cost involved in recapturing the discount or award for a governmental entity.*

Sec. 39.03 [39.02]. OFFICIAL OPPRESSION. (a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor.

Sec. 39.04 [39.021]. VIOLATIONS OF THE CIVIL RIGHTS OF PERSON IN CUSTODY [A PRISONER]. (a) ~~An official or employee of [A jailer or guard employed at a municipal or county jail, by the Texas Department of Corrections, or by] a correctional facility [authorized by Article 5115d, Revised Statutes, or Article 6166g-2, Revised Statutes,] or a peace officer commits an offense if he:~~

~~[(1)] intentionally [subjects a person in custody to bodily injury knowing his conduct is unlawful;~~

~~[(2)] willfully] denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful.~~

~~(b) An offense under this section is a Class A misdemeanor [felony of the third degree. An offense under this section is a felony of the second degree if serious bodily injury occurs or a felony of the first degree if death occurs].~~

~~(c) This section shall not preclude prosecution for any other offense set out in this code.~~

~~(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.~~

~~(e) In this section, "custody" means the detention, arrest, or confinement of a person.~~

Sec. 39.05 [39.022]. FAILURE TO REPORT DEATH OF PRISONER. (a) A person commits an offense if the person is required to conduct an investigation and file a report by Article 49.18 [49.08(b)], Code of Criminal Procedure, [1965,] and the person fails to investigate the death, fails to file the report as required, or fails to include in a filed report facts known or discovered in the investigation.

(b) An offense under this section is a Class B misdemeanor.

Sec. 39.06 [39.03]. MISUSE OF OFFICIAL INFORMATION. (a) A public servant commits an offense if, in reliance on information to which he has access *by virtue of his office or employment* [in his official capacity] and *that* [which] has not been made public, he:

(1) acquires or aids another to acquire a pecuniary interest in any property, transaction, or enterprise that may be affected by the information; ~~[or]~~

(2) speculates or aids another to speculate on the basis of the information; or

(3) *as a public servant, including as a principal of a school, coerces another into suppressing or failing to report that information to a law enforcement agency.*

(b) A public servant ~~[who is a judge, justice, intern, participant in a court-approved history project, or employee of an appellate court]~~ commits an offense if *with intent to obtain a benefit or with intent to harm or defraud another, he discloses or uses information for a nongovernmental purpose that:*

(1) *he has access to by means of his office or employment; and*

(2) *has not been made public [he intentionally or knowingly reveals the result or content of a proposed or actual appellate judicial decision or opinion to any person other than a judge, justice, or employee, intern, or participant in a court-approved history project under suitable supervision of the same appellate court prior to its release as a public record or announcement to all parties of interest on an equal basis].*

(c) A person commits an offense if, with intent to obtain a benefit or with intent to harm or defraud another, he ~~[intentionally or knowingly]~~ solicits or receives from a public servant information that:

(1) *the public servant has access to by means of his office or employment; and*

(2) *has not been made public [the result or content of a proposed or actual appellate judicial decision or opinion prior to the rendition of judgment, when the person knows that the content or result of such order or opinion has not been disclosed to the opposing party or parties].*

(d) In this section, "information that has not been made public" means any information to which the public does not generally have access, and that is prohibited from disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(e) Except as provided by Subsection (f), an ~~[An]~~ offense under this section is a felony of the third degree.

(f) An offense under Subsection (a)(3) is a Class C misdemeanor.

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENTY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Sec. 42.01. DISORDERLY CONDUCT. (a) A person commits an offense if he intentionally or knowingly:

(1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace;

(2) makes an offensive gesture or display in a public place, and the gesture or display tends to incite an immediate breach of the peace;

(3) creates, by chemical means, a noxious and unreasonable odor in a public place;

(4) abuses or threatens a person in a public place in an obviously offensive manner;

(5) makes unreasonable noise in a public place other than a sport shooting range, as defined by Section 250.001, Local Government Code, or in or near a private residence that he has no right to occupy;

(6) fights with another in a public place;

(7) enters on the property of another and for a lewd or unlawful purpose looks into a dwelling on the property through any window or other opening in the dwelling;

(8) while on the premises of a hotel or comparable establishment, for a lewd or unlawful purpose looks into a guest room not his own through a window or other opening in the room;

(9) discharges a firearm in a public place other than a public road or a sport shooting range, as defined by Section 250.001, Local Government Code;

(10) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(11) discharges a firearm on or across a public road; or

(12) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

(b) It is a defense to prosecution under Subsection (a)(4) ~~[of this section]~~ that the actor had significant provocation for his abusive or threatening conduct.

(c) For purposes of this section, an act is deemed to occur in a public place or near a private residence if it produces its offensive or proscribed consequences in the public place or near a private residence.

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(9) or (a)(10) ~~[of this section]~~, in which event it is a Class B misdemeanor; ~~and further provide that a person who violates Subsection (a)(11) is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200, on a second conviction is punishable by a fine of not less than \$200 nor more than \$500, and on a third or subsequent conviction is punishable by a fine of \$500.~~

Sec. 42.02. RIOT. (a) For the purpose of this section, "riot" means the assemblage of seven or more persons resulting in conduct which:

(1) creates an immediate danger of damage to property or injury to persons;

(2) substantially obstructs law enforcement or other governmental functions or services;
or

(3) by force, threat of force, or physical action deprives any person of a legal right or disturbs any person in the enjoyment of a legal right.

(b) A person commits an offense if he knowingly participates in a riot.

(c) It is a defense to prosecution under this section that the assembly was at first lawful and when one of those assembled manifested an intent to engage in conduct enumerated in Subsection (a) ~~[of this section]~~, the actor retired from the assembly.

(d) It is no defense to prosecution under this section that another who was a party to the riot has been acquitted, has not been arrested, prosecuted, or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

(e) Except as provided in Subsection (f) ~~[of this section]~~, an offense under this section is a Class B misdemeanor.

(f) An offense under this section is an offense of the same classification as any offense of a higher grade committed by anyone engaged in the riot if the offense was:

(1) in the furtherance of the purpose of the assembly; or

(2) an offense which should have been anticipated as a result of the assembly.

Sec. 42.03. OBSTRUCTING HIGHWAY OR OTHER PASSAGEWAY. (a) A person commits an offense if, without legal privilege or authority, he intentionally, knowingly, or recklessly:

(1) obstructs a highway, street, sidewalk, railway, waterway, elevator, aisle, hallway, entrance, or exit to which the public or a substantial group of the public has access, or any other place used for the passage of persons, vehicles, or conveyances, regardless of the means of creating the obstruction and whether the obstruction arises from his acts alone or from his acts and the acts of others; or

(2) disobeys a reasonable request or order to move issued by a person the actor knows to be or is informed is a peace officer, a fireman, or a person with authority to control the use of the premises:

(A) to prevent obstruction of a highway or any of those areas mentioned in Subd' sion (1) ~~[of this subsection]~~; or

(B) to maintain public safety by dispersing those gathered in dangerous proximity to a fire, riot, or other hazard.

(b) For purposes of this section, "obstruct" means to render impassable or to render passage unreasonably inconvenient or hazardous.

(c) An offense under this section is a Class B misdemeanor.

Sec. 42.04. DEFENSE WHEN CONDUCT CONSISTS OF SPEECH OR OTHER EXPRESSION. (a) If conduct that would otherwise violate Section 42.01(a)(5) (Unreasonable Noise) or 42.03 (Obstructing Passageway) ~~[of this code]~~ consists of speech or other communication, of gathering with others to hear or observe such speech or communication, or of gathering with others to picket or otherwise express in a nonviolent manner a position on social, economic, political, or religious questions, the actor must be ordered to move, disperse, or otherwise remedy the violation prior to his arrest if he has not yet intentionally harmed the interests of others which those sections seek to protect.

(b) The order required by this section may be given by a peace officer, a fireman, a person with authority to control the use of the premises, or any person directly affected by the violation.

(c) It is a defense to prosecution under Section 42.01(a)(5) or 42.03 ~~[of this code]~~:

- (1) that in circumstances in which this section requires an order no order was given;
- (2) that an order, if given, was manifestly unreasonable in scope; or
- (3) that an order, if given, was promptly obeyed.

Sec. 42.05. DISRUPTING MEETING OR PROCESSION. (a) A person commits an offense if, with intent to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action or verbal utterance.

(b) An offense under this section is a Class B misdemeanor.

Sec. 42.06. FALSE ALARM OR REPORT. (a) A person commits an offense if he knowingly initiates, communicates or circulates a report of a present, past, or future bombing, fire, offense, or other emergency that he knows is false or baseless and that would ordinarily:

- (1) cause action by an official or volunteer agency organized to deal with emergencies;
- (2) place a person in fear of imminent serious bodily injury; or
- (3) prevent or interrupt the occupation of a building, room, place of assembly, place to which the public has access, or aircraft, automobile, or other mode of conveyance.

(b) An offense under this section is a Class A misdemeanor unless the false report is of an emergency involving a *public primary or secondary school*, public communications, public transportation, public water, gas, or power supply or other public service, in which event the offense is a *state jail felony* ~~[of the third degree]~~.

Sec. 42.061. SILENT OR ABUSIVE CALLS TO 9-1-1 SERVICE. (a) In this section "9-1-1 service" and "public safety answering point" or "PSAP" have the meanings assigned by Section 772.001, Health and Safety Code.

(b) A person commits an offense if the person makes a telephone call to 9-1-1 when there is not an emergency and knowingly or intentionally:

- (1) remains silent; or
- (2) makes abusive or harassing statements to a PSAP employee.

(c) A person commits an offense if the person knowingly permits a telephone under the person's control to be used by another person in a manner described in Subsection (b) ~~[of this section]~~.

(d) An offense under this section is a Class B misdemeanor ~~[, unless it is shown on the trial of a defendant that the defendant has been previously convicted under this section, in which event the offense is a Class A misdemeanor]~~.

Sec. 42.07. HARASSMENT. (a) A person commits an offense if, with intent to harass, annoy, alarm, abuse, torment, or embarrass another, he:

- (1) initiates communication by telephone or in writing and in the course of the communication makes a comment, request, suggestion, or proposal that is obscene;
- (2) threatens, by telephone or in writing, in a manner reasonably likely to alarm the person receiving the threat, to inflict bodily injury on the person or to commit a felony against the person, a member of his family, or his property;

(3) conveys, in a manner reasonably likely to alarm the person receiving the report, a false report, which is known by the conveyor to be false, that another person has suffered death or serious bodily injury;

(4) causes the telephone of another to ring repeatedly or makes repeated telephone communications anonymously or in a manner reasonably likely to harass, annoy, alarm, abuse, torment, embarrass, or offend another;

(5) makes a telephone call and intentionally fails to hang up or disengage the connection;

(6) knowingly permits a telephone under his control to be used by a person to commit an offense under this section; or

(7)(A) on more than one occasion engages in conduct directed specifically toward the other person, including following that person, that is reasonably likely to harass, annoy, alarm, abuse, torment, or embarrass that person;

(B) on at least one of those occasions by acts or words threatens to inflict bodily injury on that person or to commit an offense against that person, a member of that person's family, or that person's property; and

(C) on at least one of those occasions engages in the conduct after the person toward whom the conduct is specifically directed has reported to a law enforcement agency the conduct described by this subdivision.

(b) For purposes of Subsection (a)(1) ~~[of this section]~~, "obscene" means containing a patently offensive description of or a solicitation to commit an ultimate sex act, including sexual intercourse, masturbation, cunnilingus, fellatio, or anilingus, or a description of an excretory function. In this section, "family" has the meaning assigned by Section 71.01, Family Code.

(c) An offense under Subsections (a)(1)–(a)(6) ~~[of this section]~~ is a Class B misdemeanor.

(d) An offense under Subsection (a)(7) ~~[of this section]~~ is a Class A misdemeanor, except that the offense is a felony of the third degree if the actor has previously been convicted under Subsection (a)(7) ~~[of this section]~~.

(e) It is an affirmative defense to prosecution under Subsection (a)(7) ~~[of this section]~~ that the actor was engaged in conduct that consisted of activity in support of constitutionally or statutorily protected rights.

~~Sec. 42.08. [PUBLIC INTOXICATION. (a) An individual commits an offense if the individual appears in a public place under the influence of alcohol or any other substance, to the degree that the individual may endanger himself or another.~~

~~[(b) In lieu of arresting an individual who commits an offense under Subsection (a) of this section, a peace officer may release an individual if:~~

~~[(1) the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and~~

~~[(2) the individual:~~

~~[(A) is released to the care of an adult who agrees to assume responsibility for the individual; or~~

~~[(B) verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.~~

~~[(c) A magistrate may release from custody an individual arrested under this section if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (b) of this section.~~

~~[(d) The release of an individual under Subsection (b) or (c) of this section to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under this section.~~

~~[(e) A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (b) or (c) of this section.~~

~~[(f) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the individual's professional medical treatment by a licensed physician.~~

~~[(g) An offense under this section is not a lesser included offense of an offense under Article 67011-1, Revised Statutes.~~

~~[(h) An offense under this section is a Class C misdemeanor.~~

~~[Sec. 42.09. DESECRATION OF VENERATED OBJECT. (a) A person commits an offense if he intentionally or knowingly desecrates:~~

~~[(1) a public monument; or~~

~~[(2) a place of worship or burial.~~

~~[(b) For purposes of this section, "desecrate" means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.~~

~~[(c) Except as provided by Subsection (d) of this section, an offense under this section is a Class A misdemeanor.~~

~~[(d) An offense under this section is a felony of the third degree if a place of worship or burial is desecrated.~~

~~[Sec. 42.10.] ABUSE OF CORPSE. (a) A person commits an offense if, not authorized by law, he intentionally or knowingly:~~

~~(1) disinters, disturbs, removes, dissects, in whole or in part, carries away, or treats in a seriously offensive manner a human corpse;~~

~~(2) conceals a human corpse knowing it to be illegally disinterred;~~

~~(3) sells or buys a human corpse or in any way traffics in a human corpse; or~~

~~(4) transmits or conveys, or procures to be transmitted or conveyed, a human corpse to a place outside the state.~~

~~(b) An offense under this section is a Class A misdemeanor.~~

~~Sec. 42.09 [42.11]. CRUELTY TO ANIMALS. (a) A person commits an offense if he intentionally or knowingly:~~

~~(1) tortures or seriously overworks an animal;~~

~~(2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;~~

~~(3) abandons unreasonably an animal in his custody;~~

~~(4) transports or confines an animal in a cruel manner;~~

~~(5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent;~~

~~(6) causes one animal to fight with another; or~~

~~(7) uses a live animal as a lure in dog race training or in dog coursing on a racetrack.~~

~~(b) It is a defense to prosecution under this section that the actor was engaged in bona fide experimentation for scientific research.~~

~~(c) For purposes of this section, "animal" means a domesticated living creature and wild living creature previously captured. "Animal" does not include an uncaptured wild creature or a wild creature whose capture was accomplished by conduct at issue under this section.~~

~~(d) An offense under this section is a Class A misdemeanor.~~

~~(e) It is a defense to prosecution under Subsection (a)(5) [of this section] that the animal was discovered on the person's property in the act of or immediately after injuring or killing the person's goats, sheep, cattle, horses, swine, or poultry and that the person killed or injured the animal at the time of this discovery.~~

~~Sec. 42.10 [42.11]. DOG FIGHTING. (a) A person commits an offense if he intentionally or knowingly:~~

~~(1) causes a dog to fight with another dog;~~

- (2) for a pecuniary benefit causes a dog to fight with another dog;
 - (3) participates in the earnings of or operates a facility used for dog fighting;
 - (4) uses or permits another to use any real estate, building, room, tent, arena, or other property for dog fighting;
 - (5) owns or trains a dog with the intent that the dog be used in an exhibition of dog fighting; or
 - (6) attends as a spectator an exhibition of dog fighting.
- (b) In this section, "dog fighting" means any situation in which one dog attacks or fights with another dog.
- (c) ~~[A party to an offense under Subdivision (2), (3), or (4) of Subsection (a) of this section may be required to furnish evidence or testify about the offense but may not be prosecuted for the offense about which he is required to furnish evidence or testify.]~~
- (d) ~~[A conviction under Subdivision (2), (3), or (4) of Subsection (a) of this section] may be had upon the uncorroborated testimony of a party to the offense.~~
- (e) ~~[(e)] It is a defense to prosecution under Subdivision (1) or (2) of Subsection (a) of this section that the actor caused a dog to fight with another dog to protect livestock, other property, or a person from the other dog, and for no other purpose.~~
- (f) ~~[(f)] An offense under Subdivision (1) or (5) of Subsection (a) of this section is a Class A misdemeanor. An offense under Subdivision (2), (3), or (4) of Subsection (a) of this section is a state jail felony of the third degree. An offense under Subdivision (6) of Subsection (a) of this section is a Class C misdemeanor~~

~~[Sec. 42.13. INTERFERENCE WITH EMERGENCY COMMUNICATION. (a) A person commits an offense if the person intentionally, knowingly, recklessly, or with criminal negligence interrupts, disrupts, impedes, or otherwise interferes with the transmission of a communication over a citizen's land radio channel, the purpose of which communication is to inform or inquire about an emergency.~~

~~[(b) In this section, "emergency" means a condition or circumstance in which an individual is or is reasonably believed by the person transmitting the communication to be in imminent danger of serious bodily injury or in which property is or is reasonably believed by the person transmitting the communication to be in imminent danger of damage or destruction.~~

~~[(c) An offense under this section is a Class B misdemeanor unless, as a result of the commission of the offense, serious bodily injury or property loss in excess of \$1,000 occurs, in which event the offense is a felony of the third degree.]~~

Sec. 42.11 [42.14]. DESTRUCTION OF FLAG. (a) A person commits an offense if the person intentionally or knowingly damages, defaces, mutilates, or burns the flag of the United States or the State of Texas.

(b) In this section, "flag" means an emblem, banner, or other standard or a copy of an emblem, standard, or banner that is an official or commonly recognized depiction of the flag of the United States or of this state and is capable of being flown from a staff of any character or size. The term does not include a representation of a flag on a written or printed document, a periodical, stationery, a painting or photograph, or an article of clothing or jewelry.

(c) It is an exception to the application of this section that the act that would otherwise constitute an offense is done in conformity with statutes of the United States or of this state relating to the proper disposal of damaged flags.

(d) An offense under this section is a Class A misdemeanor.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

Sec. 43.01. DEFINITIONS. In this subchapter:

(1) "Deviate sexual intercourse" means any contact between the genitals of one person and the mouth or anus of another person.

(2) "Prostitution" means the offense defined in Section 43.02 ~~[of this code]~~.

(3) "Sexual contact" means any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.

(4) "Sexual conduct" includes deviate sexual intercourse, sexual contact, and sexual intercourse.

(5) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.

Sec. 43.02. PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

(2) solicits another in a public place to engage with him in sexual conduct for hire.

(b) An offense is established under Subsection (a)(1) ~~[of this section]~~ whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) ~~[of this section]~~ whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

Sec. 43.03. PROMOTION OF PROSTITUTION. (a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

(1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or

(2) solicits another to engage in sexual conduct with another person for compensation.

(b) An offense under this section is a Class A misdemeanor.

Sec. 43.04. AGGRAVATED PROMOTION OF PROSTITUTION. (a) A person commits an offense if he knowingly owns, invests in, finances, controls, supervises, or manages a prostitution enterprise that uses two or more prostitutes.

(b) An offense under this section is a felony of the third degree.

Sec. 43.05. COMPELLING PROSTITUTION. (a) A person commits an offense if he knowingly:

(1) causes another by force, threat, or fraud to commit prostitution; or

(2) causes by any means a person younger than 17 years to commit prostitution.

(b) An offense under this section is a felony of the second degree.

Sec. 43.06. ACCOMPLICE WITNESS: TESTIMONY AND IMMUNITY. (a) A party to an offense under this subchapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this subchapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this subchapter may be had upon the uncorroborated testimony of a party to the offense.

[Sections 43.07 to 43.20 reserved for expansion]

SUBCHAPTER B. OBSCENITY

Sec. 43.21. DEFINITIONS. (a) In this subchapter:

(1) "Obscene" means material or a performance that:

(A) the average person, applying contemporary community standards, would find that taken as a whole appeals to the prurient interest in sex;

(B) depicts or describes:

(i) patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, sodomy, and sexual bestiality; or

(ii) patently offensive representations or descriptions of masturbation, excretory functions, sadism, masochism, lewd exhibition of the genitals, the male or female genitals in a state of sexual stimulation or arousal, covered male genitals in a discernibly turgid state or a device designed and marketed as useful primarily for stimulation of the human genital organs; and

(C) taken as a whole, lacks serious literary, artistic, political, and scientific value.

(2) "Material" means anything tangible that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound, or in any other manner, but does not include an actual three dimensional obscene device.

(3) "Performance" means a play, motion picture, dance, or other exhibition performed before an audience.

(4) "Patently offensive" means so offensive on its face as to affront current community standards of decency.

(5) "Promote" means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.

(6) "Wholesale promote" means to manufacture, issue, sell, provide, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, or to offer or agree to do the same for purpose of resale.

(7) "Obscene device" means a device including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs.

(b) If any of the depictions or descriptions of sexual conduct described in this section are declared by a court of competent jurisdiction to be unlawfully included herein, this declaration shall not invalidate this section as to other patently offensive sexual conduct included herein.

Sec. 43.22. OBSCENE DISPLAY OR DISTRIBUTION. (a) A person commits an offense if he intentionally or knowingly displays or distributes an obscene photograph, drawing, or similar visual representation or other obscene material and is reckless about whether a person is present who will be offended or alarmed by the display or distribution.

(b) An offense under this section is a Class C misdemeanor.

Sec. 43.23. OBSCENITY. (a) A person commits an offense if, knowing its content and character, he wholesale promotes or possesses with intent to wholesale promote any obscene material or obscene device.

(b) An offense under Subsection (a) ~~[of this section]~~ is a *state jail felony* ~~[of the third degree]~~.

(c) A person commits an offense if, knowing its content and character, he:

(1) promotes or possesses with intent to promote any obscene material or obscene device; or

(2) produces, presents, or directs an obscene performance or participates in a portion thereof that is obscene or that contributes to its obscenity.

(d) An offense under Subsection (c) ~~[of this section]~~ is a Class A misdemeanor.

(e) A person who promotes or wholesale promotes obscene material or an obscene device or possesses the same with intent to promote or wholesale promote it in the course of his business is presumed to do so with knowledge of its content and character.

(f) A person who possesses six or more obscene devices or identical or similar obscene articles is presumed to possess them with intent to promote the same.

(g) *It is an affirmative defense to prosecution under this section that the* ~~[This section does not apply to a]~~ person who possesses or promotes ~~[distributes obscene]~~ material or a device proscribed ~~[obscene devices or participates in conduct otherwise proscribed]~~ by this

section *does so for a bona fide medical, psychiatric, judicial, legislative, [when the possession, participation,] or [conduct occurs in the course of] law enforcement purpose [activities].*

Sec. 43.24. SALE, DISTRIBUTION, OR DISPLAY OF HARMFUL MATERIAL TO MINOR. (a) For purposes of this section:

- (1) "Minor" means an individual younger than 18 [17] years.
- (2) "Harmful material" means material whose dominant theme taken as a whole:
 - (A) appeals to the prurient interest of a minor, in sex, nudity, or excretion;
 - (B) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for minors; and
 - (C) is utterly without redeeming social value for minors.
- (b) A person commits an offense if, knowing that the material is harmful:
 - (1) and knowing the person is a minor, he sells, distributes, exhibits, or possesses for sale, distribution, or exhibition to a minor harmful material;
 - (2) he displays harmful material and is reckless about whether a minor is present who will be offended or alarmed by the display; or
 - (3) he hires, employs, or uses a minor to do or accomplish or assist in doing or accomplishing any of the acts prohibited in Subsection (b)(1) or (b)(2) [of this section].
- (c) It is a defense to prosecution under this section that:
 - (1) the sale, distribution, or exhibition was by a person having scientific, educational, governmental, or other similar justification; or
 - (2) the sale, distribution, or exhibition was to a minor who was accompanied by a consenting parent, guardian, or spouse.
- (d) An offense under this section is a Class A misdemeanor unless it is committed under Subsection (b)(3) [of this section] in which event it is a felony of the third degree.

Sec. 43.25. SEXUAL PERFORMANCE BY A CHILD. (a) In this section:

- (1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 [17] years of age.
- (2) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.
- (3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.
- (4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.
- (5) "Procure" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.
- (6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.
- (7) "Deviate sexual intercourse" has the meaning defined by Section 43.01 [of this code].
- ~~[(8) "Sado-masochistic abuse" has the meaning defined by Section 43.24 of this code.]~~
- (b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 [17] years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 [17] years of age commits an offense if he consents to the participation by the child in a sexual performance.
- (c) An offense under Subsection (b) [of this section] is a felony of the second degree.
- (d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 [17] years of age.

(e) An offense under Subsection (d) ~~[of this section]~~ is a felony of the third degree.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant, in good faith, reasonably believed that the child who engaged in the sexual conduct was 18 ~~[17]~~ years of age or older;

(2) the defendant was the spouse of the child at the time of the offense;

(3) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(4) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 ~~[of this code]~~ to determine whether a child who participated in sexual conduct was younger than 18 ~~[17]~~ years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

Sec. 43.251. EMPLOYMENT HARMFUL TO *CHILDREN* ~~[MINORS]~~. (a) In this section:

(1) "Child" means a person younger than 18 ~~[17]~~ years of age.

(2) "Massage" *has the meaning assigned to the term "massage therapy" by Section 1, Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes)* ~~[means the rubbing, kneading, tapping, compression, vibration, application of friction, or percussion of the human body or parts of it by hand or with an instrument or apparatus].~~

(3) "Massage establishment" *has the meaning assigned by Section 1, Chapter 752, Acts of the 69th Legislature, Regular Session, 1985 (Article 4512k, Vernon's Texas Civil Statutes)* ~~[means a commercial activity the primary business of which is the rendering of massage. The term does not include the businesses of licensed physical therapists, licensed athletic trainers, licensed cosmetologists, or licensed barbers engaged in performing functions authorized by the license held].~~

(4) "Nude" means a child who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts, if the child is female, or any portion of the genitals or buttocks.

(5) "Sexually oriented commercial activity" means a massage establishment, nude studio, modeling studio, love parlor, or other similar commercial enterprise the primary business of which is the offering of a service that is intended to provide sexual stimulation or sexual gratification to the customer.

(6) "Topless" means a female child clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of her breasts below the top of the areola.

(b) A person commits an offense if the person employs, authorizes, or induces a child to work:

(1) in a sexually oriented commercial activity; or

(2) in any place of business permitting, requesting, or requiring a child to work nude or topless.

(c) An offense under this section is a Class A misdemeanor.

Sec. 43.26. POSSESSION OR PROMOTION OF CHILD PORNOGRAPHY. (a) A person commits an offense if:

(1) the person knowingly or intentionally possesses material containing a film image that visually depicts a child younger than 18 [17] years of age at the time the film image of the child was made who is engaging in sexual conduct; and

(2) the person knows that the material depicts the child as described by Subdivision (1) [of this subsection].

(b) In this section:

(1) "Film image" includes a photograph, slide, negative, film, or videotape, or a reproduction of any of these.

(2) "Sexual conduct" has the meaning assigned by Section 43.25 [of this code].

(3) "Promote" has the meaning assigned by Section 43.25 [of this code].

(c) The affirmative defenses provided by Section 43.25(f) [of this code] also apply to a prosecution under this section.

(d) An offense under this section is a felony of the third degree.

(e) A person commits an offense if:

(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1) [of this section]; and

(2) the person knows that the material depicts the child as described by Subsection (a)(1) [of this section].

(f) A person who possesses six or more identical film images depicting a child as described by Subsection (a)(1) [of this section] is presumed to possess the film images with the intent to promote the material.

(g) An offense under Subsection (e) [of this section] is a felony of the third degree.

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

Sec. 46.01. [CHAPTER] DEFINITIONS. In this chapter:

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include antique or curio firearms that were manufactured prior to 1899 and that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter.

(4) "Firearm silencer" means any device designed, made, or adapted to muffle the report of a firearm.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Illegal knife" means a:

- (A) knife with a blade over five and one-half inches;
- (B) [a] hand instrument designed to cut or stab another by being thrown;
- (C) dagger, including but not limited to a dirk, stiletto, and poniard;
- (D) bowie knife;
- (E) sword; or
- (F) spear.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) "Knuckles" means any instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) "Switchblade knife" means any knife that has a blade that folds, closes, or retracts into the handle or sheath, and that:

(A) opens automatically by pressure applied to a button or other device located on the handle; or

(B) opens or releases a blade from the handle or sheath by the force of gravity or by the application of centrifugal force.

(12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

(13) "Hoax bomb" means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

(14) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of *dispensing a substance capable of* causing an adverse psychological or physiological effect on a human being.

(15) "Racetrack" has the meaning assigned that term by the Texas Racing Act (Article 179a, Vernon's Texas Civil Statutes).

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy generated by an explosion or burning substance.

Sec. 46.02. UNLAWFUL CARRYING WEAPONS. (a) A person commits an offense if he intentionally, knowingly, or recklessly carries on or about his person a handgun, illegal knife, or club.

(b) *It is a defense to prosecution under this section that the actor was, at the time of the commission of the offense* [~~Except as provided in Subsection (c), an offense under this section is a Class A misdemeanor.~~]

~~[(c) An offense under this section is a felony of the third degree if it occurs on any premises licensed or issued a permit by this state for the sale or service of alcoholic beverages.~~

~~[Sec. 46.03. NON-APPLICABLE. (a) The provisions of Section 46.02 of this code do not apply to a person]:~~

(1) in the actual discharge of his official duties as a member of the armed forces or state military forces as defined by Section 431.001, Government Code, or as a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a security guard to protect persons or property, in which event he must comply with Subdivision (5) ~~[of this subsection]~~;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity *on the immediate premises where the activity is conducted, or was directly en route between the premises and the actor's residence*, if the weapon is a type commonly used in the activity;

(5) a person who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view; or

(6) ~~[who is]~~ a peace officer, other than a person commissioned by the Texas State Board of Pharmacy.

(c) *It is a defense to prosecution under this section for the offense of carrying a club that the actor was, at the time of the commission of the offense, ~~[(b) The provision of Section 46.02 of this code prohibiting the carrying of a club does not apply to]~~ a noncommissioned security guard at an institution of higher education who carried ~~[carries]~~ a nightstick or similar club, and who ~~had~~ ~~[has]~~ undergone 15 hours of training in the proper use of the club, including at least seven hours of training in the use of the club for nonviolent restraint. For the purposes of this section, "nonviolent restraint" means the use of reasonable force, not intended and not likely to inflict bodily injury.*

(d) *It is a defense to prosecution under this section for the offense of carrying a firearm or carrying a club that the actor was, at the time of the commission of the offense, ~~[(e) The prohibition of carrying a handgun or club in Section 46.02 of this code does not apply to]~~ a public security officer employed by the adjutant general under Section 431.029, Government Code, and was performing ~~[in performance of]~~ official duties or ~~[while]~~ traveling to or from a place of duty.*

(e) *Except as provided by Subsection (f), an offense under this section is a Class A misdemeanor.*

(f) *An offense under this section is a felony of the third degree if the offense is committed on any premises licensed or issued a permit by this state for the sale of alcoholic beverages.*

Sec. 46.03 [46.04]. PLACES WEAPONS PROHIBITED. (a) A person commits an offense if, with a firearm, illegal knife, club, or prohibited weapon listed in Section 46.05(a) ~~[46.06(a) of this code]~~, he intentionally, knowingly, or recklessly goes:

(1) on the *physical* premises of a school, ~~[or] an educational institution, or a passenger transportation vehicle of a school or an educational institution~~, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) in any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court; ~~[or]~~

(4) on the premises of a racetrack; or

(5) *into a secured area of an airport.*

(b) It is a defense to prosecution *under Subsections (a)(1)–(4)* that the actor possessed a firearm ~~[under Subsection (a) of this section]~~ while in the actual discharge of his official duties as a peace officer or a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) *In this section "secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.*

(d) *It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:*

- (1) *a peace officer;*
- (2) *a member of the armed forces or national guard;*
- (3) *a guard employed by a penal institution; or*
- (4) *a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:*
 - (A) *the actor is wearing a distinctive uniform; and*
 - (B) *the firearm or club is in plain view.*

(e) *It is a defense to prosecution under Subsection (a)(5) that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.*

(f) *An offense under this section is a third degree felony.*

Sec. 46.04 [46.05]. **UNLAWFUL POSSESSION OF FIREARM BY FELON.** (a) A person who has been convicted of a felony [~~involving an act of violence or threatened violence to a person or property~~] commits an offense if he possesses a firearm:

- (1) *after conviction and before the fifth anniversary of the person's release from confinement following conviction of the felony or the person's release from supervision under community supervision, parole, or mandatory supervision, whichever date is later; or*
- (2) *after the period described by Subdivision (1), at any location other than the premises at which the person lives [~~away from the premises where he lives~~].*

(b) *An offense under this section is a felony of the third degree.*

Sec. 46.05 [46.06]. **PROHIBITED WEAPONS.** (a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

- (1) *an explosive weapon;*
- (2) *a machine gun;*
- (3) *a short-barrel firearm;*
- (4) *a firearm silencer;*
- (5) *a switchblade knife;*
- (6) *knuckles;*
- (7) *armor-piercing ammunition;*
- (8) *a chemical dispensing device; or*
- (9) *a zip gun.*

(b) *It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a *correctional facility* [~~penal institution~~].*

(c) *It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.*

(d) *It is an affirmative defense to prosecution under this section that the actor's conduct:*

- (1) *was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio; or*
- (2) *was incidental to dealing with armor-piercing ammunition solely for the purpose of making the ammunition available to an organization, agency, or institution listed in Subsection (b) [~~of this section~~].*

(e) *An offense under this section is a felony of the *third* [~~second~~] degree unless it is committed under Subsection (a)(5) or (a)(6) [~~of this section~~], in which event, it is a Class A misdemeanor.*

Sec. 46.06 [46.07]. UNLAWFUL TRANSFER OF CERTAIN WEAPONS. (a) A person commits an offense if he:

(1) sells, rents, leases, loans, or gives a handgun to any person knowing that the person to whom the handgun is to be delivered intends to use it unlawfully or in the commission of an unlawful act;

(2) intentionally or knowingly sells, rents, leases, or gives or offers to sell, rent, lease, or give to any child younger than 18 years any firearm, club, or illegal knife ~~[or any martial arts throwing stars]; [or]~~

(3) intentionally, knowingly, or recklessly sells a firearm or ammunition for a firearm to any person who is intoxicated; or

(4) knowingly sells a firearm or ammunition for a firearm to any person who has been convicted of a felony before the fifth anniversary of the later of the following dates:

(A) the person's release from confinement following conviction of the felony; or

(B) the person's release from supervision under community supervision, parole, or mandatory supervision following conviction of the felony.

(b) For purposes of this section, "intoxicated" means substantial impairment of mental or physical capacity resulting from introduction of any substance into the body.

(c) It is an affirmative defense to prosecution under Subsection (a)(2) ~~[of this section]~~ that the transfer was to a minor whose parent or the person having legal custody of the minor had given written permission for the sale or, if the transfer was other than a sale, the parent or person having legal custody had given effective consent.

(d) An offense under this section is a Class A misdemeanor.

Sec. 46.07 [46.08]. INTERSTATE PURCHASE. A resident of this state may, if not otherwise precluded by law, purchase firearms, ammunition, reloading components, or firearm accessories in contiguous states. This authorization is enacted in conformance with Section 922(b)(3)(A), Public Law 90-618, 90th Congress.

Sec. 46.08 [46.09]. HOAX BOMBS. (a) A person commits an offense if the person knowingly manufactures, sells, purchases, transports, or possesses a hoax bomb with intent to use the hoax bomb to:

(1) make another believe that the hoax bomb is an explosive or incendiary device; or

(2) cause alarm or reaction of any type by an official of a public safety agency or volunteer agency organized to deal with emergencies.

(b) An offense under this section is a Class A misdemeanor.

Sec. 46.09 [46.10]. COMPONENTS OF EXPLOSIVES. (a) A person commits an offense if the person knowingly possesses components of an explosive weapon with the intent to combine the components into an explosive weapon for use in a criminal endeavor.

(b) An offense under this section is a felony of the third degree.

Sec. 46.10 [46.11]. DEADLY WEAPON IN PENAL INSTITUTION. (a) A person commits an offense if, while confined in a penal institution, he intentionally, knowingly, or recklessly:

(1) carries on or about his person a deadly weapon; or

(2) possesses or conceals a deadly weapon in the penal institution.

(b) It is an affirmative defense to prosecution under this section that at the time of the offense the actor was engaged in conduct authorized by an employee of the penal institution.

(c) A person who is subject to prosecution under both this section and another section under this chapter may be prosecuted under either section.

(d) An offense under this section is a felony of the third degree.

~~[Sec. 46.12. UNLAWFUL CARRYING OF WEAPONS AT AIRPORT. (a) A person commits an offense if the person intentionally, knowingly, or recklessly enters a secured area of an airport with a handgun or other firearm capable of being concealed on the person, illegal knife, or club.~~

~~[(b) In this section "secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law.~~

~~[(c) It is a defense to prosecution that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:~~

~~[(1) a peace officer;~~

~~[(2) a member of the armed forces or national guard;~~

~~[(3) a guard employed by a penal institution; or~~

~~[(4) a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies if:~~

~~[(A) the actor is wearing a distinctive uniform; and~~

~~[(B) the firearm or club is in plain view.~~

~~[(d) It is a defense to prosecution that the actor checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area.~~

~~[(e) An offense under this section is a Class A misdemeanor.]~~

CHAPTER 47. GAMBLING

Sec. 47.01. DEFINITIONS. In this chapter:

(1) "Bet" means an agreement ~~[that, dependent on chance even though accompanied by some skill, one stands]~~ to win or lose something of value *solely or partially by chance*. A bet does not include:

(A) contracts of indemnity or guaranty, or life, health, property, or accident insurance;

(B) an offer of a prize, award, or compensation to the actual contestants in a bona fide contest for the determination of skill, speed, strength, or endurance or to the owners of animals, vehicles, watercraft, or aircraft entered in a contest; *or*

(C) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit religious, fraternal, school, law enforcement, youth, agricultural, or civic group, *including any nonprofit agricultural or civic group incorporated by the state before 1955*, if the person to receive the merchandise from the proprietor is the person who performs the carnival contest; ~~or~~

~~[(D) an offer of merchandise, with a value not greater than \$25, made by the proprietor of a bona fide carnival contest conducted at a carnival sponsored by a nonprofit agricultural or civic group incorporated by the State of Texas prior to 1955].~~

(2) "Bookmaking" means:

(A) *to receive and record or to forward more than five bets or offers to bet in a period of 24 hours;*

(B) *to receive and record or to forward bets or offers to bet totaling more than \$1,000 in a period of 24 hours; or*

(C) *a scheme by three or more persons to receive, record, or forward a bet or an offer to bet.*

(3) "Gambling place" means any real estate, building, room, tent, vehicle, boat, or other property whatsoever, one of the uses of which is the making or settling of bets, *bookmaking* ~~[the receiving, holding, recording, or forwarding of bets or offers to bet]~~, or the conducting of a lottery or the playing of gambling devices.

(4) [(3)] "Gambling device" means any contrivance that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined *solely or partially* by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.

(5) [(4)] "Altered gambling equipment" means any contrivance that has been altered in some manner, including, but not limited to, shaved dice, loaded dice, magnetic dice, mirror

rings, electronic sensors, shaved cards, marked cards, and any other equipment altered or [and] designed to enhance the actor's chances of winning.

(6) [(5)] "Gambling paraphernalia" means any book, instrument, or apparatus by means of which bets have been or may be recorded or registered; any record, ticket, certificate, bill, slip, token, writing, scratch sheet, or other means of carrying on bookmaking, wagering pools, lotteries, numbers, policy, or similar games.

(7) [(6)] "Lottery" means any scheme or procedure whereby one or more prizes are distributed by chance among persons who have paid or promised consideration for a chance to win anything of value, whether such scheme or procedure is called a pool, lottery, raffle, gift, gift enterprise, sale, policy game, or some other name.

(8) [(7)] "Private place" means a place to which the public does not have access, and excludes, among other places, streets, highways, restaurants, taverns, nightclubs, schools, hospitals, and the common areas of apartment houses, hotels, motels, office buildings, transportation facilities, and shops.

(9) [(8)] "Thing of value" means any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.

Sec. 47.02. GAMBLING. (a) A person commits an offense if he:

(1) makes a bet on the partial or final result of a game or contest or on the performance of a participant in a game or contest;

(2) makes a bet on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(3) plays and bets for money or other thing of value at any game played with cards, dice, [or] balls, or any other gambling device.

(b) It is a defense to prosecution under this section that:

(1) the actor engaged in gambling in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

(c) It is a defense to prosecution under this section that the actor reasonably believed that the conduct:

(1) was permitted under the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(2) was permitted under the Charitable Raffle Enabling Act (Article 179f, Revised Statutes); [or]

(3) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes); or

(4) was permitted under the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes).

(d) An offense under this section is a Class C misdemeanor.

Sec. 47.03. GAMBLING PROMOTION. (a) A person commits an offense if he intentionally or knowingly does any of the following acts:

(1) operates or participates in the earnings of a gambling place;

(2) engages in bookmaking;

(3) for gain, becomes a custodian of anything of value bet or offered to be bet;

(4) sells chances on the partial or final result of or on the margin of victory in any game or contest or on the performance of any participant in any game or contest or on the result of any political nomination, appointment, or election or on the degree of success of any nominee, appointee, or candidate; or

(5) for gain, sets up or promotes any lottery or sells or offers to sell or knowingly possesses for transfer, or transfers any card, stub, ticket, check, or other device designed to serve as evidence of participation in any lottery.

(b) ~~In this section "bookmaking" means:~~

~~[(1) the receiving and recording of or the forwarding of more than five bets or offers to bet in one 24-hour period;~~

~~[(2) the receiving and recording of or the forwarding of bets or offers to bet totalling more than \$1,000 in one 24-hour period; or~~

~~[(3) a scheme by three or more persons to receive, record, or forward bets or offers to bet.~~

~~[(c)] An offense under this section is a Class A misdemeanor [felony of the third degree].~~

Sec. 47.04. KEEPING A GAMBLING PLACE. (a) A person commits an offense if he knowingly uses or permits another to use as a gambling place any real estate, building, room, tent, vehicle, boat, or other property whatsoever owned by him or under his control, or rents or lets any such property with a view or expectation that it be so used.

(b) It is an affirmative defense to prosecution under this section that:

(1) the ~~[actor engaged in]~~ gambling occurred in a private place;

(2) no person received any economic benefit other than personal winnings; and

(3) except for the advantage of skill or luck, the risks of losing and the chances of winning were the same for all participants.

~~(c) [It is an affirmative defense to prosecution under this section that the gambling place is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:~~

~~[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling place on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;~~

~~[(2) the portion of the vessel that is used as a gambling place is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;~~

~~[(3) no person other than the master and crew of the vessel is permitted to enter or view the gambling place while the vessel is in the territorial waters of this state; and~~

~~[(4) the gambling place is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.~~

~~[(d)] An offense under this section is a Class A misdemeanor [felony of the third degree].~~

Sec. 47.05. COMMUNICATING GAMBLING INFORMATION. (a) A person commits an offense if, with the intent to further gambling, he knowingly communicates information as to bets, betting odds, or changes in betting odds or he knowingly provides, installs, or maintains equipment for the transmission or receipt of such information.

(b) *It is an exception to the application of Subsection (a) that the information communicated is intended for use in placing a lawful wager under Article 11, Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes), and is not communicated in violation of Section 14.01 of that Act.*

(c) An offense under this section is a Class A misdemeanor ~~[felony of the third degree]~~.

Sec. 47.06. POSSESSION OF GAMBLING DEVICE, ~~[OR] EQUIPMENT, OR PARAPHERNALIA~~. (a) A person commits an offense if, *with the intent to further gambling*, he knowingly owns, manufactures, transfers, or possesses any gambling device that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of a gambling device.

(b) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses any altered gambling equipment that he knows is designed for gambling purposes or any equipment that he knows is designed as a subassembly or essential part of such device.

(c) *A person commits an offense if, with the intent to further gambling, the person knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.*

(d) *It is a defense to prosecution under Subsections (a) and (c) that:*

(1) *the device, equipment, or paraphernalia is used for or is intended for use in gambling that is to occur entirely in a private place;*

(2) *a person involved in the gambling does not receive any economic benefit other than personal winnings; and*

(3) *except for the advantage of skill or luck, the chance of winning is the same for all participants. [It is an affirmative defense to prosecution under this section that the device or equipment is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:*

[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device or equipment on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

[(2) the portion of the vessel in which the device or equipment is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

[(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device or equipment is located while the vessel is in the territorial waters of this state; and

[(4) the device or equipment is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

~~[(d) It is a defense to prosecution under this section that the gambling device is 15 years old or older and not used for gambling, gambling promotion, or keeping a gambling place under Sections 47.02, 47.03, and 47.04, respectively, of this code, and that the party possessing same;~~

~~[(1) within 30 days after coming into possession of same or the effective date of this amendment, whichever last occurs, furnished the following information to the sheriff of the county wherein such device is to be maintained:~~

~~[(A) the name and address of the party possessing same;~~

~~[(B) the name of the manufacturer, date of manufacture, and serial number of the device, if available; and~~

~~[(2) within 30 days of the transfer of such device advises the sheriff of the county to whom the information provided for in item (1) above was furnished of the name and address of the transferee.]~~

(e) *An offense under this section is a Class A misdemeanor [felony of the third degree].*

(f) *It is a defense to prosecution under Subsection (a) or (c) [of this section] that the person owned, manufactured, transferred, or possessed the gambling device, [or] equipment, or paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the device, [or] equipment, or paraphernalia was legal.*

(g) *A district or county attorney is not required to have a search warrant or subpoena to inspect a gambling device or gambling equipment or paraphernalia on an ocean-going vessel that enters the territorial waters of this state to call at a port in this state [It is a defense to prosecution for an offense under this chapter that the conduct was authorized, directly or indirectly, by the State Lottery Act, the lottery division in the office of the comptroller, the comptroller, or the director of the lottery division].*

Sec. 47.07. [POSSESSION OF GAMBLING PARAPHERNALIA. (a) A person commits an offense if, with the intent to further gambling, he knowingly owns, manufactures, transfers commercially, or possesses gambling paraphernalia.

~~[(b) It is an affirmative defense to prosecution under this section that the gambling paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:~~

~~[(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;~~

~~[(2) the portion of the vessel in which the gambling paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;~~

~~[(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the gambling paraphernalia is located while the vessel is in the territorial waters of this state; and~~

~~[(4) the gambling paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.~~

~~[(c) An offense under this section is a Class A misdemeanor.~~

~~[(d) The district or county attorney shall not be required to have a search warrant or subpoena to enter the vessel to inspect the gambling paraphernalia.~~

~~[(e) It is a defense to prosecution under this section that the person owned, manufactured, transferred commercially, or possessed the gambling paraphernalia for the sole purpose of shipping it to another jurisdiction where the possession or use of the paraphernalia was legal.~~

~~[Sec. 47.08.] EVIDENCE. [(a) Proof that an actor communicated gambling information or possessed a gambling device, equipment, or paraphernalia is prima facie evidence that the actor did so knowingly and with the intent to further gambling.~~

~~[(b)] In any prosecution under this chapter in which it is relevant to prove the occurrence of a sporting event, a published report of its occurrence in a daily newspaper, magazine, or other periodically printed publication of general circulation shall be admissible in evidence and is prima facie evidence that the event occurred.~~

Sec. 47.08 [47.09]. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) A party to an offense under this chapter may not be prosecuted for any offense about which he is required to furnish evidence or testify, and the evidence and testimony may not be used against the party in any adjudicatory proceeding except a prosecution for aggravated perjury.

(c) For purposes of this section, "adjudicatory proceeding" means a proceeding before a court or any other agency of government in which the legal rights, powers, duties, or privileges of specified parties are determined.

(d) A conviction under this chapter may be had upon the uncorroborated testimony of a party to the offense.

Sec. 47.09. OTHER DEFENSES. (a) It is a defense to prosecution under this chapter that the conduct:

(1) was authorized under:

(A) the Bingo Enabling Act (Article 179d, Vernon's Texas Civil Statutes);

(B) the Texas Racing Act (Article 179e, Vernon's Texas Civil Statutes); or

(C) the Charitable Raffle Enabling Act (Article 179f, Revised Statutes);

(2) consisted entirely of participation in the state lottery authorized by the State Lottery Act (Article 179g, Vernon's Texas Civil Statutes); or

(3) was a necessary incident to the operation of the state lottery and was directly or indirectly authorized by the:

(A) State Lottery Act;

(B) lottery division of the comptroller's office;

(C) comptroller; or

(D) director of the lottery division.

(b) It is an affirmative defense to prosecution under Sections 47.04, 47.06(a), and 47.06(c) that the gambling device, equipment, or paraphernalia is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device, equipment, or paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the device, equipment, or paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device, equipment, or paraphernalia is located while the vessel is in the territorial waters of this state; and

(4) the device, equipment, or paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

~~Sec. 47.10. [BINGO. It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Bingo Enabling Act.~~

~~[Sec. 47.11. PARI-MUTUEL WAGERING ON CERTAIN RACES. It is a defense to prosecution for an offense under this chapter that the conduct was authorized under the Texas Racing Act.~~

~~[Sec. 47.12. RAFFLE BY NONPROFIT ORGANIZATION. It is a defense to prosecution under this chapter that the conduct was authorized by the Charitable Raffle Enabling Act (Article 179f, Revised Statutes).~~

~~[Sec. 47.13.] AMERICAN DOCUMENTATION OF VESSEL REQUIRED. If 18 U.S.C. Section 1082 is repealed, the affirmative defenses provided by Section 47.09(b) [Sections 47.04(e), 47.06(e), and 47.07(b) of this code] apply only if the vessel is documented under the laws of the United States.~~

~~[Sec. 47.14. STATE LOTTERY. It is a defense to prosecution for an offense under this chapter that the conduct:~~

~~[(1) consisted entirely of participation in the state lottery authorized by the State Lottery Act; or~~

~~[(2) was a necessary incident to the operation of the state lottery and was authorized, directly or indirectly, by the State Lottery Act, the lottery division in the office of the comptroller, the comptroller, or the director of the lottery division.]~~

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

Sec. 48.01. SMOKING TOBACCO. (a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed \$500.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to

prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

Sec. 48.02. PROHIBITION OF THE PURCHASE AND SALE OF HUMAN ORGANS.

(a) "Human organ" means the human kidney, liver, heart, lung, pancreas, eye, bone, skin, fetal tissue, or any other human organ or tissue, but does not include hair or blood, blood components (including plasma), blood derivatives, or blood reagents.

(b) A person commits an offense if he or she knowingly or intentionally offers to buy, offers to sell, acquires, receives, sells, or otherwise transfers any human organ for valuable consideration.

(c) It is an exception to the application of this section that the valuable consideration is: (1) a fee paid to a physician or to other medical personnel for services rendered in the usual course of medical practice or a fee paid for hospital or other clinical services; (2) reimbursement of legal or medical expenses incurred for the benefit of the ultimate receiver of the organ; or (3) reimbursement of expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.

(d) A violation of this section is a *Class A misdemeanor* [~~felony of the third degree~~].

CHAPTER 49. INTOXICATION AND ALCOHOLIC BEVERAGE OFFENSES

Sec. 49.01. DEFINITIONS. *In this chapter:*

(1) "Alcohol concentration" means the number of grams of alcohol per:

(A) 210 liters of breath;

(B) 100 milliliters of blood; or

(C) 67 milliliters of urine.

(2) "Intoxicated" means:

(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, a dangerous drug, a combination of two or more of those substances, or any other substance into the body; or

(B) having an alcohol concentration of 0.10 or more.

(3) "Motor vehicle" has the meaning assigned by Section 32.34(a).

(4) "Watercraft" means a vessel, one or more water skis, an aquaplane, or another device used for transporting or carrying a person on water, other than a device propelled only by the current of water.

Sec. 49.02. PUBLIC INTOXICATION. (a) A person commits an offense if the person appears in a public place while intoxicated to the degree that the person may endanger the person or another.

(b) It is a defense to prosecution under this section that the alcohol or other substance was administered for therapeutic purposes and as a part of the person's professional medical treatment by a licensed physician.

(c) An offense under this section is a Class C misdemeanor.

(d) An offense under this section is not a lesser included offense under Section 49.04.

Sec. 49.03. CONSUMPTION OR POSSESSION OF ALCOHOLIC BEVERAGE IN MOTOR VEHICLE. (a) A person commits an offense if the person consumes an alcoholic beverage while operating a motor vehicle in a public place and is observed doing so by a peace officer.

(b) An offense under this section is a Class C misdemeanor.

Sec. 49.04. *DRIVING WHILE INTOXICATED.* (a) A person commits an offense if the person is intoxicated while driving or operating a motor vehicle in a public place.

(b) Except as provided by Subsection (c) and Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

(c) If it is shown on the trial of an offense under this section that at the time of the offense the person driving or operating the motor vehicle had an open container of alcohol in the person's immediate possession, the offense is a Class B misdemeanor, with a minimum term of confinement of six days.

Sec. 49.05. *FLYING WHILE INTOXICATED.* (a) A person commits an offense if the person is intoxicated while operating an aircraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.06. *BOATING WHILE INTOXICATED.* (a) A person commits an offense if the person is intoxicated while operating a watercraft.

(b) Except as provided by Section 49.09, an offense under this section is a Class B misdemeanor, with a minimum term of confinement of 72 hours.

Sec. 49.07. *INTOXICATION ASSAULT.* (a) A person commits an offense if the person, by accident or mistake, while operating an aircraft, watercraft, or motor vehicle in a public place while intoxicated, by reason of that intoxication causes serious bodily injury to another.

(b) In this section, "serious bodily injury" means injury that creates a substantial risk of death or that causes serious permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ.

(c) An offense under this section is a felony of the third degree.

Sec. 49.08. *INTOXICATION MANSLAUGHTER.* (a) A person commits an offense if the person:

- (1) operates a motor vehicle in a public place, an aircraft, or a watercraft; and
- (2) is intoxicated and by reason of that intoxication causes the death of another by accident or mistake.

(b) An offense under this section is a felony of the second degree.

Sec. 49.09. *ENHANCED OFFENSES AND PENALTIES.* (a) If it is shown on the trial of an offense under Section 49.04, 49.05, or 49.06 that the person has previously been convicted one time of an offense relating to the driving or operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated, the offense is a Class A misdemeanor, with a minimum term of confinement of 15 days.

(b) If it is shown on the trial of an offense under Section 49.04, 49.05, or 49.06 that the person has previously been convicted two times of an offense relating to the driving or operating of a motor vehicle while intoxicated, an offense of operating an aircraft while intoxicated, or an offense of operating a watercraft while intoxicated, the offense is a felony of the third degree.

(c) For the purposes of this section:

(1) "Offense relating to the driving or operating of a motor vehicle while intoxicated" means:

- (A) an offense under Section 49.04;
- (B) an offense under Article 6701b-1, Revised Statutes, as that law existed before September 1, 1994;
- (C) an offense under Article 6701b-2, Revised Statutes, as that law existed before January 1, 1984; or
- (D) an offense under the laws of another state that prohibit the operation of a motor vehicle while intoxicated.

(2) "Offense of operating an aircraft while intoxicated" means:

(A) an offense under Section 49.05;

(B) an offense under Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of an aircraft while intoxicated.

(3) "Offense of operating a watercraft while intoxicated" means:

(A) an offense under Section 49.06;

(B) an offense under Section 31.097, Parks and Wildlife Code, as that law existed before September 1, 1994; or

(C) an offense under the laws of another state that prohibit the operation of a watercraft while intoxicated.

(d) For the purposes of this section, a conviction for an offense under Section 49.04, 49.05, or 49.06 that occurs on or after September 1, 1994, is a final conviction, whether the sentence for the conviction is imposed or probated.

(e) A conviction may not be used for purposes of enhancement under this section if:

(1) the conviction was a final conviction under Subsection (e) and was for an offense committed more than 10 years before the offense for which the person is being tried was committed; and

(2) the person has not been convicted of an offense under Section 49.04, 49.05, or 49.06 or any offense related to driving or operating a motor vehicle while intoxicated committed within 10 years before the date on which the offense for which the person is being tried was committed.

Sec. 49.10. NO DEFENSE. In a prosecution under Section 49.03, 49.04, 49.05, 49.06, 49.07, or 49.08, the fact that the defendant is or has been entitled to use the alcohol, controlled substance, drug, dangerous drug, or other substance is not a defense.

TITLE 11. ORGANIZED CRIME [~~AND CRIMINAL STREET GANGS~~]

CHAPTER 71. ORGANIZED CRIME [~~AND CRIMINAL STREET GANGS~~]

Sec. 71.01. DEFINITIONS. In this chapter,

(a) "Combination" means three or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

(c) "Profits" means property constituting or derived from any proceeds obtained, directly or indirectly, from an offense listed in Section 71.02 [~~of this code~~].

[(d) "Criminal street gang" means three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities.]

Sec. 71.02. ENGAGING IN ORGANIZED CRIMINAL ACTIVITY. (a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination [~~or as a member of a criminal street gang~~], he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, aggravated sexual assault, sexual assault, ~~[or] forgery, deadly conduct, assault punishable as a Class A misdemeanor, burglary of a motor vehicle, or unauthorized use of a motor vehicle;~~

(2) any ~~[felony]~~ gambling offense *punishable as a Class A misdemeanor*;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons;

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;

(6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;

(7) any unlawful employment, authorization, or inducing of a child younger than 17 years of age in an obscene sexual performance;

(8) any felony offense under Chapter 32, Penal Code; or

(9) any offense under Chapter 36, Penal Code.

(b) Except as provided in *Subsections* ~~[Subsection]~~ (c) and (d) ~~[of this section]~~, an offense under this section is one category higher than the most serious offense listed in ~~[Subdivisions (1) through (9) of]~~ Subsection (a) ~~[of this section]~~ that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a *state jail felony* ~~[of the third degree]~~, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in ~~[Subdivisions (1) through (9) of]~~ Subsection (a) ~~[of this section]~~ that the person conspired to commit.

(d) *At the punishment stage of a trial, the defendant may raise the issue as to whether in voluntary and complete renunciation of the offense he withdrew from the combination before commission of an offense listed in Subsection (a) and made substantial effort to prevent the commission of the offense. If the defendant proves the issue in the affirmative by a preponderance of the evidence the offense is the same category of offense as the most serious offense listed in Subsection (a) that is committed, unless the defendant is convicted of conspiring to commit the offense, in which event the offense is one category lower than the most serious offense that the defendant conspired to commit.*

Sec. 71.03. DEFENSES EXCLUDED. It is no defense to prosecution under Section 71.02 ~~[of this code]~~ that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 ~~[of this code]~~; or

(4) once the initial combination of *three* ~~[five]~~ or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

Sec. 71.04. TESTIMONIAL IMMUNITY. (a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

Sec. 71.05. RENUNCIATION DEFENSE. (a) It is an affirmative defense to prosecution under Section 71.02 [of this code] that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in [Subdivisions (1) through (7) of] Subsection (a) of Section 71.02 [of this code] and took further affirmative action that prevented the commission of the offense.

(b) *For the purposes of this section and Subsection (d) of Section 71.02, renunciation [Renunciation] is not voluntary if it is motivated in whole or in part:*

(1) *by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or*

(2) *by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.*

~~[(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (7) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.]~~

SECTION 1.02. Section 5, Chapter 275, Acts of the 67th Legislature, Regular Session, 1981, and Section 1, Chapter 587, Acts of the 69th Legislature, Regular Session, 1985, are repealed.

SECTION 1.03. Chapter 3, Code of Criminal Procedure, is amended by adding Article 3.04 to read as follows:

Art. 3.04. OFFICIAL MISCONDUCT. In this code:

(1) *"Official misconduct" means an offense that is an intentional or knowing violation of a law committed by a public servant while acting in an official capacity as a public servant.*

(2) *"Public servant" has the meaning assigned by Section 1.07, Penal Code.*

SECTION 1.04. Chapter 14, Code of Criminal Procedure, is amended by adding Article 14.031 to read as follows:

Art. 14.031. PUBLIC INTOXICATION. (a) In lieu of arresting an individual who commits an offense under Section 49.02, Penal Code, a peace officer may release an individual if:

(1) *the officer believes detention in a penal facility is unnecessary for the protection of the individual or others; and*

(2) *the individual:*

(A) *is released to the care of an adult who agrees to assume responsibility for the individual; or*

(B) *verbally consents to voluntary treatment for chemical dependency in a program in a treatment facility licensed and approved by the Texas Commission on Alcohol and Drug Abuse, and the program admits the individual for treatment.*

(b) *A magistrate may release from custody an individual arrested under Section 49.02, Penal Code, if the magistrate determines the individual meets the conditions required for release in lieu of arrest under Subsection (a) of this article.*

(c) *The release of an individual under Subsection (a) or (b) of this article to an alcohol or drug treatment program may not be considered by a peace officer or magistrate in determining whether the individual should be released to such a program for a subsequent incident or arrest under Section 49.02, Penal Code.*

(d) *A peace officer and the agency or political subdivision that employs the peace officer may not be held liable for damage to persons or property that results from the actions of an individual released under Subsection (a) or (b) of this article.*

SECTION 1.05. Article 14.06(b), Code of Criminal Procedure, is amended to read as follows:

(b) A peace officer who is charging a person with committing an offense that is a Class C misdemeanor, other than an offense under Section 49.02 [42.08], Penal Code, may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, and the offense charged.

SECTION 1.06. Article 18.20, Code of Criminal Procedure, is amended by adding Section 18 to read as follows:

Sec. 18. This article expires September 1, 2005, and shall not be in force on and after that date.

SECTION 1.07. Subchapter A, Chapter 102, Code of Criminal Procedure, is amended by adding Article 102.017 to read as follows:

Art. 102.017. COSTS ATTENDANT TO INTOXICATION CONVICTIONS. (a) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle under Section 49.04, Penal Code, the court shall impose a cost of \$15 on a defendant if, subsequent to the arrest of the defendant, a law enforcement agency visually recorded the defendant with an electronic device. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case. The court shall collect the costs in the same manner as other costs are collected in the case.

(b) Except as provided by Subsection (d) of this article, on conviction of an offense relating to the driving or operating of a motor vehicle punishable under Section 49.04(b), Penal Code, the court shall impose as a cost of court on the defendant an amount that is equal to the cost of an evaluation of the defendant performed under Section 13(a), Article 42.12, of this code. Costs imposed under this subsection are in addition to other court costs and are due whether or not the defendant is granted probation in the case, except that if the court determines that the defendant is indigent and unable to pay the cost, the court may waive the imposition of the cost.

(c)(1) Except as provided by Subsection (d) of this article, if a person commits an offense under Chapter 49, Penal Code, and as a direct result of the offense the person causes an incident resulting in an accident response by a public agency, the person is liable on conviction for the offense for the reasonable expense to the agency of the accident response. In this article, a person is considered to have been convicted in a case if:

- (A) sentence is imposed;*
- (B) the defendant receives probation or deferred adjudication; or*
- (C) the court defers final disposition of the case.*

(2) The liability authorized by this subsection may be established by civil suit; however, if a determination is made during a criminal trial that a person committed an offense under Chapter 49, Penal Code, and as a direct result of the offense the person caused an incident resulting in an accident response by a public agency, the court may include the obligation for the liability as part of the judgment. A judgment that includes such an obligation is enforceable as any other judgment.

(3) The liability is a debt of the person to the public agency, and the public agency may collect the debt in the same manner as the public agency collects an express or implied contractual obligation to the agency.

(4) A person's liability under this subsection for the reasonable expense of an accident response may not exceed \$1,000 for a particular incident. For the purposes of this subdivision, a reasonable expense for an accident response includes only those costs to the public agency arising directly from an accident response to a particular incident, such as the cost of providing police, fire-fighting, rescue, ambulance, and emergency medical services at the scene of the incident and the salaries of the personnel of the public agency responding to the incident.

(5) A bill for the expense of an accident response sent to a person by a public agency under this subsection must contain an itemized accounting of the components of the total

charge. A bill that complies with this subdivision is prima facie evidence of the reasonableness of the costs incurred in the accident response to which the bill applies.

(6) A policy of motor vehicle insurance delivered, issued for delivery, or renewed in this state may not cover payment of expenses charged to a person under this subsection.

(7) In this subsection, "public agency" means the state, a county, a municipality district, or a public authority located in whole or in part in this state that provides police, fire-fighting, rescue, ambulance, or emergency medical services.

(d) Subsections (a), (b), and (c) of this article do not apply to an offense under Section 49.02 or 49.03, Penal Code.

SECTION 1.08. Subsection (g), Section 24, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), is amended by amending Subdivision (2) and adding Subdivision (5) to read as follows:

(2)(A) After the date has passed, according to records of the Department, for successful completion of an educational program designed to rehabilitate persons who have driven while intoxicated, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is effective for a period of twelve (12) months.

(B) After the date has passed, according to records of the Department, for successful completion of an educational program for repeat offenders as required by Section 13, Article 42.12, Code of Criminal Procedure, if the records do not indicate successful completion of the program, the Director shall suspend the person's driver's license, permit, or nonresident operating privilege or, if the person is a resident without a license or permit to operate a motor vehicle in this state, shall issue an order prohibiting the person from obtaining a license or permit. A suspension or prohibition order under this subsection is continued until the person successfully completes that program.

(5) On the date that a suspension under Subsection (c) of this section is to expire, the period of suspension or the corresponding period in which the Department is prohibited from issuing a license to a person is automatically increased for a period of 24 months unless the Department has received notice that the person has successfully completed an educational program under Section 13, Article 42.12, Code of Criminal Procedure. At the time a person is convicted of an offense under Section 49.04, Penal Code, the court shall warn the person of the effect of this subdivision. On successful completion of the program, a person shall present proof of the completion to the clerk of the court in which the person was convicted. The clerk shall report the date of completion to the Department in the same manner as required by Section 13, Article 42.12, Code of Criminal Procedure. If the Department receives proof of completion after a period of suspension or prohibition has been extended under this subdivision, the Department shall immediately end the suspension or prohibition. This subdivision does not apply to a person whose license the Department is prohibited from suspending under Subdivision (1) of this subsection.

SECTION 1.09. Section 1, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Any person who operates a motor vehicle in ~~[upon the public highways or upon]~~ a public place, or a watercraft, ~~[beach]~~ in this state shall be deemed to have given consent, subject to the provisions of this Act, to submit to the taking of one or more specimens of his breath or blood for the purpose of analysis to determine the alcohol concentration or the presence in his body of a controlled substance, ~~[or]~~ drug, dangerous drug, or other substance, if arrested for any offense arising out of acts alleged to have been committed while a person was driving or in actual physical control of a motor vehicle or a watercraft while intoxicated. Any person so arrested may consent to the giving of any other type of specimen to determine his alcohol concentration, but he shall not be deemed, solely on the basis of his operation of a motor vehicle in ~~[upon the public highways or upon]~~ a public place, or a watercraft, ~~[beach]~~ in this state, to have given consent to give any type of specimen other than a specimen of his

breath or blood. The specimen, or specimens, shall be taken at the request of a peace officer having reasonable grounds to believe the person to have been driving or in actual physical control of a motor vehicle *in* ~~[upon the public highways or upon]~~ a public place, or a watercraft, ~~[beach]~~ in this state while intoxicated.

SECTION 1.10. Section 2, Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), is amended by amending Subsection (f) and adding Subsections (j) and (k) to read as follows:

(f) When the director receives the report, the director shall suspend the person's license, permit, or nonresident operating privilege, or shall issue an order prohibiting the person from obtaining a license or permit, for 90 days effective 28 days after the date the person receives notice by certified mail or 31 days after the date the director sends notice by certified mail, if the person has not accepted delivery of the notice. If, not later than the 20th day after the date on which the person receives notice by certified mail or the 23rd day after the date the director sent notice by certified mail, if the person has not accepted delivery of the notice, the department receives a written demand that a hearing be held, the department shall, not later than the 10th day after the day of receipt of the demand, request a court to set the hearing for the earliest possible date. The hearing shall be set in the same manner as a hearing under Section 22(a), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6687b, Vernon's Texas Civil Statutes). If, upon such hearing the court finds (1) that probable cause existed that such person was driving or in actual physical control of a motor vehicle *in* ~~[on the highway or upon]~~ a public place ~~[beach]~~ while intoxicated, (2) that the person was placed under arrest by the officer and was offered an opportunity to give a specimen under the provisions of this Act, and (3) that such person refused to give a specimen upon request of the officer, then the Director of the ~~[Texas]~~ Department of Public Safety shall suspend the person's license or permit to drive, or any nonresident operating privilege for a period of 90 days, as ordered by the court. If the person is a resident without a license or permit to operate a motor vehicle in this State, the ~~[Texas]~~ Department of Public Safety shall deny to the person the issuance of a license or permit for 90 days.

(j) *This section applies only to a person arrested for an offense involving the operation of a motor vehicle.*

(k) *A suspension under this Act may not be probated.*

SECTION 1.11. Sections 3(a), (c), (h), (i), and (j), Chapter 434, Acts of the 61st Legislature, Regular Session, 1969 (Article 67011-5, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Upon the trial of any criminal action or proceeding arising out of an offense *involving the operation of a motor vehicle or a watercraft under Chapter 49 [Subdivision (2), Subsection (a), Section 19.05], Penal Code, [or an offense under Article 67011-1, Revised Statutes,]* evidence of the alcohol concentration or presence of a controlled substance, ~~[or]~~ drug, *dangerous drug, or other substance* as shown by analysis of a specimen of the person's blood, breath, urine, or any other bodily substances taken at the request or order of a peace officer, shall be admissible.

(c) When a person gives a specimen of blood at the request or order of a peace officer under the provisions of this Act, only a physician, qualified technician, chemist, registered professional nurse, or licensed vocational nurse may withdraw a blood specimen for the purpose of determining the alcohol concentration or presence of a controlled substance, ~~[or]~~ drug, *dangerous drug, or other substance* therein. For purposes of this subsection, "qualified technician" does not include emergency medical services personnel. The sample must be taken in a sanitary place. The person drawing the blood specimen at the request or order of a peace officer under the provisions of this Act, or the hospital where that person is taken for the purpose of securing the blood specimen, shall not be held liable for damages arising from the request or order of the peace officer to take the blood specimen as provided herein, provided the blood specimen was withdrawn according to recognized medical procedures, and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood specimen. Breath specimens taken at the request or order of a peace officer must be taken and analysis made under such conditions as may be prescribed by the ~~[Texas]~~ Department of Public Safety, and by such persons as the ~~[Texas]~~ Department of Public Safety has certified to be qualified.

(h) Any person who is dead, unconscious, or otherwise in a condition rendering the person incapable of refusal, whether the person was arrested or not, shall be deemed not to have withdrawn the consent provided by Section 1 of this Act. If the person is dead, a specimen may be withdrawn by the county medical examiner or the examiner's designated agent or, if there is no county medical examiner for the county, by a licensed mortician or a person authorized as provided by Subsection (c) of this section. If the person is not dead but is incapable of refusal, a specimen may be withdrawn by a person authorized as provided by Subsection (c) of this section. Evidence of alcohol concentration or the presence of a controlled substance, ~~or~~ drug, *dangerous drug*, or *other substance* obtained by an analysis authorized by this subsection is admissible in a civil or criminal action.

(i) A peace officer shall require a person to give a specimen under Section 2 of this Act if:

(1) the officer arrests the person for an offense *involving the operation of a motor vehicle or a watercraft* under Chapter 49 [Subdivision (2), Subsection (a), Section 19.05], Penal Code~~, or an offense under Article 6701i-1, Revised Statutes, as amended~~;

(2) the person was the operator of a motor vehicle *or a watercraft* involved in an accident that the officer reasonably believes occurred as a result of the offense;

(3) at the time of the arrest the officer reasonably believes that a person has died or will die as a direct result of the accident; and

(4) the person refuses the officer's request to voluntarily give a specimen.

(j) In this Act:

(1) "Alcohol concentration" *has the meaning assigned by Section 49.01, Penal Code* [means:

~~[(A) the number of grams of alcohol per 100 milliliters of blood;~~

~~[(B) the number of grams of alcohol per 210 liters of breath; or~~

~~[(C) the number of grams of alcohol per 67 milliliters of urine].~~

(2) "Controlled substance" has the [same] meaning *assigned by [as is given that term in] Section 481.002, Health and Safety Code.*

(3) "*Dangerous drug*" *has the meaning assigned by Section 483.001, Health and Safety Code.*

(4) "Drug" has the [same] meaning *assigned by [as is given that term in] Section 481.002, Health and Safety Code.*

(5) [(4)] "Intoxicated" *has the meaning assigned by Section 49.01, Penal Code* [means:

~~[(A) not having the normal use of mental or physical faculties by reason of the introduction of alcohol, a controlled substance, a drug, or a combination of two or more of those substances into the body; or~~

~~[(B) having an alcohol concentration of 0.10 or more].~~

~~[(5) "Public beach" has the same meaning as is given that term in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~[(6) ["Public highway" has the same meaning as is given the term "highway" in the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes).]~~

~~[(7)] "Public place" has the meaning assigned by [Subdivision (29), Subsection (a),] Section 1.07, Penal Code.~~

SECTION 1.12. Section 31.097, Parks and Wildlife Code, is repealed.

SECTION 1.13. Section 1, Chapter 46, Acts of the 58th Legislature, Regular Session, 1963 (Article 46f-3, Vernon's Texas Civil Statutes), is repealed.

SECTION 1.14. Section 107E, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is repealed.

SECTION 1.15. Article 6701i-1, Revised Statutes, is repealed.

SECTION 1.16. Section 11.17, Chapter 10, Acts of the 72nd Legislature, 2nd Called Session, 1991, is repealed.

SECTION 1.17. Under the terms of Section 22.109(b), Government Code, Rule 412(e), Texas Rules of Criminal Evidence, is disapproved.

SECTION 1.18. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 1.19. (a) Except as provided by Subsection (b) of this section, this article takes effect on September 1, 1994.

(b) The repeal of Section 12.422, Penal Code, as provided by Section 1.01 of this article, Section 16.02(i), Penal Code, as added by Section 1.01 of this article, and Sections 1.02, 1.06, and 1.16 of this article take effect September 1, 1993.

ARTICLE 2

SECTION 2.01. Section 481.002, Health and Safety Code, is amended by adding Subdivision (49) to read as follows:

(49) "Adulterant or dilutant" means any material that increases the bulk or quantity of a controlled substance, regardless of its effect on the chemical activity of the controlled substance.

SECTION 2.02. Sections 481.108, 481.112, 481.113, 481.114, 481.115, 481.116, 481.117, 481.118, 481.120, 481.121, 481.122, 481.125, 481.126, 481.127, 481.128, 481.129, and 481.131, Health and Safety Code, are amended to read as follows:

Sec. 481.108. PREPARATORY OFFENSES. Title 4, Penal Code, applies to Section 481.126 ~~[and offenses designated as aggravated offenses under this subchapter]~~, except that the punishment for a preparatory offense *under Section 481.126 is the punishment for a first degree felony* ~~(the same as the punishment prescribed for the offense that was the object of the preparatory offense).~~

Sec. 481.112. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 1.

(b) An offense under Subsection (a) is a *state jail felony* ~~[of the first degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than *one gram* ~~[28 grams]~~.

(c) ~~An [A person commits an aggravated offense if the person commits an]~~ offense under Subsection (a) *is a felony of the second degree if* ~~[and]~~ the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, *one gram* ~~[28 grams] or more but less than four grams.~~

(d) An offense under Subsection (a) ~~[(a)]~~ is a *felony of the first degree* ~~;~~

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, *four* ~~[28]~~ grams or more but less than 200 grams.~~

(e) An offense under Subsection (a) is ~~;~~

~~[(2) punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams. [; and]~~

~~[(3) punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed~~

\$250,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 481.113. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 2. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 2.

(b) An offense under Subsection (a) is a *state jail felony* ~~[of the second degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than *one gram* ~~[28 grams]~~.

(c) ~~An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the second degree if [and] the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, one gram [28 grams] or more but less than four grams.~~

(d) An offense under Subsection (a) ~~[(e)]~~ is a *felony of the first degree*:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, four [28] grams or more but less than 400 grams.[-and]~~

(e) ~~An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 400 grams or more.~~

Sec. 481.114. OFFENSE: MANUFACTURE OR DELIVERY OF SUBSTANCE IN PENALTY GROUP 3 OR 4. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance listed in Penalty Group 3 or 4.

(b) An offense under Subsection (a) is a *state jail felony* ~~[of the third degree]~~ if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, less than *28* ~~[200]~~ grams.

(c) ~~An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the second degree if [and] the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 28 [200] grams or more but less than 200 grams.~~

(d) An offense under Subsection (a) ~~[(e)]~~ is a *felony of the first degree*:

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance to which the offense applies is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.[-and]~~

(e) ~~An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance to which the offense applies is, by aggregate weight, including any adulterants or dilutants, 400 grams or more.~~

Sec. 481.115. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 1. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 1, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a *state jail felony* ~~[of the second degree]~~ if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than *one gram* ~~[28 grams]~~.

(c) ~~An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the third degree if [and] the amount of the controlled substance~~

possessed is, by aggregate weight, including adulterants or dilutants, *one gram* [28 grams] or more *but less than four grams*.

(d) An offense under Subsection (a) [(e)] is a *felony of the second degree*;

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *four* [28] grams or more but less than 200 [400] grams.[-and]~~

(e) *An offense under Subsection (a) is a felony of the first degree if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.*

(f) *An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.*

Sec. 481.116. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 2.
(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 2, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a *state jail felony* [~~of the third degree~~] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *less than one gram* [28 grams].

(c) ~~An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the third degree if [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *one gram* [28 grams] or more but less than four grams.~~

(d) An offense under Subsection (a) [(e)] is a *felony of the second degree*;

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *four* [28] grams or more but less than 400 grams.[-and]~~

(e) *An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than five [10] years, and a fine not to exceed \$50,000 [\$100,000], if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.*

Sec. 481.117. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 3.
(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 3, unless the person obtains the substance directly from or under a valid prescription or order of a practitioner acting in the course of professional practice.

(b) An offense under Subsection (a) is a Class A misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *less than 28* [200] grams.

(c) ~~An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the third degree if [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, *28* [200] grams or more but less than 200 grams.~~

(d) An offense under Subsection (a) [(e)] is a *felony of the second degree*;

~~[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000,] if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.[-and]~~

(e) An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than five [10] years, and a fine not to exceed \$50,000 [\$100,000], if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 481.118. OFFENSE: POSSESSION OF SUBSTANCE IN PENALTY GROUP 4.

(a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a controlled substance listed in Penalty Group 4, unless the person obtained the substance directly from or under a valid prescription or order of a practitioner acting in the course of practice.

(b) An offense under Subsection (a) is a Class B misdemeanor if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, less than 28 [200] grams.

(c) An [A person commits an aggravated offense if the person commits an] offense under Subsection (a) is a felony of the third degree if [and] the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 28 [200] grams or more but less than 200 grams.

(d) An offense under Subsection (a) [(e)] is a felony of the second degree[;

[(1) punishable by confinement in the Texas Department of Corrections for life or a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000], if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 200 grams or more but less than 400 grams.[; and]

(e) An offense under Subsection (a) is [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than five [10] years, and a fine not to exceed \$50,000 [\$100,000], if the amount of the controlled substance possessed is, by aggregate weight, including adulterants or dilutants, 400 grams or more.

Sec. 481.120. OFFENSE: DELIVERY OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally delivers marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense does not receive remuneration for the marihuana;

(2) a Class A misdemeanor if the amount of marihuana delivered is one-fourth ounce or less and the person committing the offense receives remuneration for the marihuana;

(3) a state jail felony [of the third degree] if the amount of marihuana delivered is five pounds [four ounces] or less but more than one-fourth ounce;

(4) a felony of the second degree if the amount of marihuana delivered is 50 [five] pounds or less but more than five pounds [four ounces]; [and]

(5) a felony of the first degree if the amount of marihuana delivered is 2,000 [50] pounds or less but more than 50 [5] pounds; and[.

[(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and the amount of marihuana delivered is more than 50 pounds.

[(d) An offense under Subsection (a) is:

[(1) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, if the amount of marihuana delivered is 200 pounds or less but more than 50 pounds;]

(6) [(2)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, [if the amount of marihuana delivered is 2,000 pounds or less but more than 200 pounds; and

~~[(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000,] if the amount of marihuana delivered is more than 2,000 pounds.~~

Sec. 481.121. OFFENSE: POSSESSION OF MARIHUANA. (a) Except as authorized by this chapter, a person commits an offense if the person knowingly or intentionally possesses a usable quantity of marihuana.

(b) An offense under Subsection (a) is:

(1) a Class B misdemeanor if the amount of marihuana possessed is two ounces or less;
(2) a Class A misdemeanor if the amount of marihuana possessed is four ounces or less but more than two ounces;

(3) a *state jail felony* ~~[of the third degree]~~ if the amount of marihuana possessed is five pounds or less but more than four ounces; ~~[and]~~

(4) a felony of the *third* ~~[second]~~ degree if the amount of marihuana possessed is 50 pounds or less but more than 5 pounds; ~~[.]~~

(5) a *felony of the second degree* if

~~[(c) A person commits an aggravated offense if the person commits an offense under Subsection (a) and] the amount of marihuana possessed is 2,000 pounds or less but more than 50 pounds; and[.]~~

~~[(d) An offense under Subsection (c) is:]~~

~~(6) [(1)] punishable by imprisonment [confinement] in the institutional division of the Texas Department of Criminal Justice [Corrections] for life or for a term of not more than 99 years or less than 5 years, and a fine not to exceed \$50,000, [if the amount of marihuana possessed is 200 pounds or less but more than 50 pounds;~~

~~[(2) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 10 years, and a fine not to exceed \$100,000, if the amount of marihuana possessed is 2,000 pounds or less but more than 200 pounds; and~~

~~[(3) punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 15 years, and a fine not to exceed \$250,000,] if the amount of marihuana possessed is more than 2,000 pounds.~~

~~[(e) An offense for which the punishment is prescribed by Subsection (b) may not be considered a crime of moral turpitude.]~~

Sec. 481.122. OFFENSE: DELIVERY OF CONTROLLED SUBSTANCE OR MARIHUANA TO MINOR. (a) Except as authorized by this chapter, a person commits an ~~[aggravated]~~ offense if the person knowingly or intentionally delivers a controlled substance listed in Penalty Group 1, 2, or 3 or knowingly or intentionally delivers marihuana and the person delivers the controlled substance or marihuana to a person:

- (1) who is 17 years of age or younger;
- (2) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person 17 years of age or younger;
- (3) who is enrolled in an elementary or secondary school; or
- (4) who the actor knows or believes intends to deliver the controlled substance or marihuana to a person who is enrolled in an elementary or secondary school.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the actor was younger than 18 years of age when the offense was committed; or
- (2) the actor was younger than 21 years of age when the offense was committed and delivered only marihuana in an amount less than one-fourth ounce for which the actor did not receive remuneration.

(c) An offense under this section is a felony of the *second* ~~[first]~~ degree.

Sec. 481.125. OFFENSE: POSSESSION OR DELIVERY OF DRUG PARAPHERNALIA. (a) A person commits an offense if the person knowingly or intentionally uses or possesses with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store,

contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(b) A person commits an offense if the person knowingly or intentionally delivers, possesses with intent to deliver, or manufactures with intent to deliver drug paraphernalia knowing that the person who receives or who is intended to receive the drug paraphernalia intends that it be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter or to inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

(c) A person commits an offense if the person commits an offense under Subsection (b), is 18 years of age or older, and the person who receives or who is intended to receive the drug paraphernalia is younger than 18 years of age and at least three years younger than the actor.

(d) An offense under Subsection (a) is a Class C misdemeanor~~[unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a), in which event the offense is a Class B misdemeanor]~~.

(e) An offense under Subsection (b) is a Class A misdemeanor, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (b) or (c), in which event the offense is *punishable by confinement in jail for a term of not more than one year or less than 90 days* ~~[a felony of the third degree]~~.

(f) An offense under Subsection (c) is a *state jail felony* ~~[of the third degree]~~.

Sec. 481.126. OFFENSE: ILLEGAL EXPENDITURE OR INVESTMENT. (a) A person commits an offense if the person knowingly or intentionally:

(1) expends funds the person knows are derived from the commission of an offense:

(A) under Section 481.115(a) or 481.116(a) ~~[481.112(e), 481.113(e), 481.114(e), 481.115(e), 481.116(e), 481.117(e), 481.118(e), 481.120(e), or 481.121(e)]~~; or

(B) *punishable under Section 481.112(d), 481.112(e), 481.113(d), 481.114(c), 481.117(c), 481.118(c), 481.120(b)(5), 481.120(b)(6), 481.121(b)(5), or 481.121(b)(6)*; or

(2) finances or invests funds the person knows or believes are intended to further the commission of an offense listed in Subdivision (1) *or an offense for which the punishment is listed under Subdivision (1)*.

(b) An offense under this section is *a felony of the first degree* ~~[punishable by confinement in the Texas Department of Corrections for life or for a term of not more than 99 years or less than 5 years, and a fine of not more than \$1,000,000 or less than \$50,000]~~.

Sec. 481.127. OFFENSE: UNAUTHORIZED DISCLOSURE OF INFORMATION. (a) A person commits an offense if the person intentionally or knowingly gives, permits, or obtains unauthorized access to information submitted to the Department of Public Safety under Section 481.075.

(b) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

Sec. 481.128. OFFENSE AND CIVIL PENALTY: COMMERCIAL MATTERS. (a) A registrant or dispenser commits an offense if the registrant or dispenser knowingly or intentionally:

(1) distributes, delivers, administers, or dispenses a controlled substance in violation of Sections 481.070–481.074;

(2) manufactures a controlled substance not authorized by the person's registration or distributes or dispenses a controlled substance not authorized by the person's registration to another registrant or other person;

(3) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by this chapter;

(4) prints, manufactures, possesses, or produces a triplicate prescription form without the approval of the Department of Public Safety;

(5) delivers or possesses a counterfeit triplicate prescription;

(6) refuses an entry into a premise for an inspection authorized by this chapter;
(7) refuses or fails to return a triplicate prescription form as required by Section 481.075(h); or

(8) refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule adopted before June 1, 1991, by the director.

(b) If the registrant or dispenser knowingly or intentionally refuses or fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than \$5,000 for each act.

(c) If the registrant or dispenser negligently fails to make, keep, or furnish a record, report, notification, order form, statement, invoice, or information required by a rule or a rule amendment adopted on or after June 1, 1991, by the director, the registrant or dispenser is liable to the state for a civil penalty of not more than \$1,000 for each act.

(d) An offense under Subsection (a) is a *state jail felony* ~~[of the second degree, unless it is shown on the trial of a defendant that the defendant has previously been convicted under Subsection (a), in which event the offense is a felony of the first degree].~~

(e) If a person negligently commits an act that would otherwise be an offense under Subsection (a), the person is liable to the state for a civil penalty of not less than \$5,000 or more than \$10,000 for each act.

(f) A district attorney of the county where the act occurred may file suit in district court in that county to collect a civil penalty under this section, or the district attorney of Travis County or the attorney general may file suit in district court in Travis County to collect the penalty.

Sec. 481.129. OFFENSE: FRAUD. (a) A person commits an offense if the person knowingly or intentionally:

(1) distributes as a registrant or dispenser a controlled substance listed in Schedule I or II, unless the person distributes the controlled substance under an order form as required by Section 481.069;

(2) uses in the course of manufacturing, prescribing, or distributing a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(3) uses a triplicate prescription form issued to another person to prescribe a controlled substance;

(4) possesses or attempts to possess a controlled substance:

(A) by misrepresentation, fraud, forgery, deception, or subterfuge;

(B) through use of a fraudulent prescription form; or

(C) through use of a fraudulent oral or telephonically communicated prescription; or

(5) furnishes false or fraudulent material information in or omits material information from an application, report, record, or other document required to be kept or filed under this chapter.

(b) A person commits an offense if the person knowingly or intentionally:

(1) makes, distributes, or possesses a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce an actual or simulated trademark, trade name, or other identifying mark, imprint, or device of another on a controlled substance or the container or label of a container for a controlled substance, so as to make the controlled substance a counterfeit substance; or

(2) manufactures, delivers, or possesses with intent to deliver a counterfeit substance.

(c) A person commits an offense if the person knowingly or intentionally:

(1) delivers a prescription or a prescription form for other than a valid medical purpose in the course of professional practice; or

(2) possesses a prescription for a controlled substance or a prescription form unless the prescription or prescription form is possessed:

(A) during the manufacturing or distribution process;

(B) by a practitioner, practitioner's agent, or an institutional practitioner for a valid medical purpose during the course of professional practice;

(C) by a pharmacist or agent of a pharmacy during the professional practice of pharmacy;

(D) under a practitioner's order made by the practitioner for a valid medical purpose in the course of professional practice; or

(E) by an officer or investigator authorized to enforce this chapter within the scope of the officer's or investigator's official duties.

(d) An offense under Subsection (a) is:

(1) a felony of the second degree if the controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if the controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if the controlled substance that is the subject of the offense is listed in Schedule V.

(e) An offense under Subsection (b) is a Class A misdemeanor.

(f) An offense under Subsection (c)(1) is:

(1) a felony of the second degree if the defendant delivers:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II; and

(2) a felony of the third degree if the defendant delivers a prescription for a controlled substance listed in Schedule III, IV, or V.

(g) An offense under Subsection (c)(2) is:

(1) a *state jail* felony [~~of the third degree~~] if the defendant possesses:

(A) a prescription form; or

(B) a prescription for a controlled substance listed in Schedule II or III; and

(2) a Class B misdemeanor if the defendant possesses a prescription for a controlled substance listed in Schedule IV or V.

Sec. 481.131. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE PROPERTY OR PLANT. (a) A person commits an offense if the person intentionally or knowingly:

(1) converts to the person's own use or benefit a controlled substance property or plant seized under Section 481.152 or 481.153; or

(2) diverts to the unlawful use or benefit of another person a controlled substance property or plant seized under Section 481.152 or 481.153.

(b) An offense under this section is a *state jail* felony [~~of the third degree~~].

SECTION 2.03. Section 482.002, Health and Safety Code, is amended to read as follows:

Sec. 482.002. UNLAWFUL DELIVERY OR MANUFACTURE WITH INTENT TO DELIVER; CRIMINAL PENALTY. (a) A person commits an offense if the person knowingly or intentionally manufactures with the intent to deliver or delivers a simulated controlled substance and the person:

(1) expressly represents the substance to be a controlled substance;

(2) represents the substance to be a controlled substance in a manner that would lead a reasonable person to believe that the substance is a controlled substance; or

(3) states to the person receiving or intended to receive the simulated controlled substance that the person may successfully represent the substance to be a controlled substance to a third party.

(b) It is a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance was:

- (1) acting in the discharge of the person's official duties as a peace officer;
- (2) manufacturing the substance for or delivering the substance to a licensed medical practitioner for use as a placebo in the course of the practitioner's research or practice; or
- (3) a licensed medical practitioner, pharmacist, or other person authorized to dispense or administer a controlled substance, and the person was acting in the legitimate performance of the person's professional duties.

(c) It is not a defense to prosecution under this section that the person manufacturing with the intent to deliver or delivering the simulated controlled substance believed the substance to be a controlled substance.

(d) An offense under this section is a *state jail felony* [~~of the third degree~~].

SECTION 2.04. Section 483.042, Health and Safety Code, is amended to read as follows:

Sec. 483.042. DELIVERY OR OFFER OF DELIVERY OF DANGEROUS DRUG. (a) A person commits an offense if the person delivers or offers to deliver a dangerous drug:

(1) unless:

(A) the dangerous drug is delivered or offered for delivery by a pharmacist under:

(i) a prescription issued by a practitioner described by Section 483.001(12)(A) or (B); or

(ii) an original written prescription issued by a practitioner described by Section 483.001(12)(C); and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the pharmacy from which the drug is delivered or offered for delivery;

(ii) the date the prescription for the drug is dispensed;

(iii) the number of the prescription as filed in the prescription files of the pharmacy from which the prescription is dispensed;

(iv) the name of the practitioner who prescribed the drug;

(v) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(vi) directions for the use of the drug as contained in the prescription; or

(2) unless:

(A) the dangerous drug is delivered or offered for delivery by a practitioner in the course of practice; and

(B) a label is attached to the immediate container in which the drug is delivered or offered to be delivered and the label contains the following information:

(i) the name and address of the practitioner;

(ii) the date the drug is delivered;

(iii) the name of the patient and, if the drug is prescribed for an animal, a statement of the species of the animal; and

(iv) the name of the drug, the strength of the drug, and directions for the use of the drug.

(b) Subsection (a) does not apply to the delivery or offer for delivery of a dangerous drug to a person listed in Section 483.041(c) for use in the usual course of business or practice or in the performance of official duties by the person.

(c) Proof of an offer to sell a dangerous drug must be corroborated by a person other than the offeree or by evidence other than a statement by the offeree.

(d) An offense under this section is a *state jail felony* [~~of the third degree~~].

SECTION 2.05. Section 483.043, Health and Safety Code, is amended to read as follows:

Sec. 483.043. MANUFACTURE OF DANGEROUS DRUG. (a) A person commits an offense if the person manufactures a dangerous drug and the person is not authorized by law to manufacture the drug.

(b) An offense under this section is a *state jail felony* ~~[of the third degree]~~.

SECTION 2.06. Section 485.033, Health and Safety Code, is amended to read as follows:

Sec. 485.033. DELIVERY TO A MINOR. (a) A person commits an offense if the person intentionally, knowingly, or recklessly delivers abusable glue or aerosol paint to a person who is younger than 18 years of age.

(b) It is a defense to prosecution under this section that the abusable glue or aerosol paint that was delivered contains additive material that effectively discourages intentional abuse by inhalation or is in compliance with rules adopted by the commissioner under Section 485.011.

(c) It is an affirmative defense to prosecution under this section that:

(1) the person making the delivery is an adult having supervisory responsibility over the person younger than 18 years of age and:

(A) the adult permits the use of the abusable glue or aerosol paint only under the adult's direct supervision and in the adult's presence and only for its intended purpose; and

(B) the adult removes the substance from the person younger than 18 years of age on completion of that use; or

(2) the person to whom the abusable glue or aerosol paint was delivered presented to the defendant an apparently valid Texas driver's license or an identification card, issued by the Department of Public Safety of the State of Texas and containing a physical description consistent with the person's appearance, that purported to establish that the person was 18 years of age or older.

(d) Except as provided by Subsections (e) and (f), an offense under this section is a *state jail felony* ~~[of the third degree]~~.

(e) An offense under this section is a Class B misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer had a glue and paint sales permit for the location of the sale.

(f) An offense under this section is a Class A misdemeanor if it is shown on the trial of the defendant that at the time of the delivery the defendant or the defendant's employer:

(1) did not have a glue and paint sales permit but did have a sales tax permit for the location of the sale; and

(2) had not been convicted previously under this section for an offense committed after January 1, 1988.

SECTION 2.07. Sections 481.106 and 481.107, Health and Safety Code, are repealed.

SECTION 2.08. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 2.09. This article takes effect on September 1, 1994.

ARTICLE 3

SECTION 3.01. Article 13.25(a), Code of Criminal Procedure, is amended to read as follows:

(a) In this section "access," "computer," "computer network," "computer program," ~~[and]~~ "computer system," and "owner" have the meanings assigned to those terms in Section 33.01, Penal Code.

SECTION 3.02. Articles 14.03(a) and (d), Code of Criminal Procedure, are amended to read as follows:

(a) Any peace officer may arrest, without warrant:

(1) persons found in suspicious places and under circumstances which reasonably show that such persons have been guilty of some felony, *violation of Title 9, Chapter 42, Penal Code*, [or] breach of the peace, or offense under Section 49.02, Penal Code, or threaten, or are about to commit some offense against the laws;

(2) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to another person and the peace officer has probable cause to believe that there is danger of further bodily injury to that person;

(3) persons who the peace officer has probable cause to believe have committed the offense defined by Section 25.08, Penal Code (violation of Protective Order), if the offense is not committed in the presence of the peace officer; or

(4) persons who the peace officer has probable cause to believe have committed an assault resulting in bodily injury to a member of the person's family or household.

(d) A peace officer who is outside his jurisdiction may arrest, without warrant, a person who commits an offense within the officer's presence or view, if the offense is a felony, [or] a violation of Title 9, Chapter 42, Penal Code, *a breach of the peace, or an offense under Section 49.02, Penal Code*. A peace officer making an arrest under this subsection shall, as soon as practicable after making the arrest, notify a law enforcement agency having jurisdiction where the arrest was made. The law enforcement agency shall then take custody of the person committing the offense and take the person before a magistrate in compliance with Article 14.06 of this code.

SECTION 3.03. Article 102.016(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person convicted of an offense under Chapter 49 [Article 67011-1, Revised Statutes, Section 19.05(a)(2)], Penal Code, *other than an offense punishable as a Class C misdemeanor, or of an offense under the Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes)*, [or Section 31.097, Parks and Wildlife Code,] shall pay as court costs \$30, in addition to other court costs.

SECTION 3.04. Subsection (b), Article 102.081, Code of Criminal Procedure, is amended to read as follows:

(b) A person convicted of an offense under Chapter 49, Penal Code, *other than an offense punishable as a Class C misdemeanor* [Article 67011-1, Revised Statutes], shall pay as a cost of court \$25.

SECTION 3.05. Chapter 16, Code of Criminal Procedure, is amended by adding Article 16.22 to read as follows:

Art. 16.22. EXAMINATION AND TRANSFER OF SUSPECTED MENTALLY ILL OR RETARDED DEFENDANT. (a) *If a sheriff provides to a magistrate evidence or a statement that establishes reasonable cause to believe that a defendant committed to the sheriff's custody is a person with mental illness or mental retardation, the magistrate shall order an examination of the defendant under Section 3(b), Article 46.02, of this code and, if necessary, the transfer of the defendant to the nearest appropriate mental health or mental retardation facility in the manner provided by Section 3(b), Article 46.02, of this code.*

(b) *After the court receives the examining expert's report relating to the defendant under Section 3(d), Article 46.02, of this code, the court may resume the criminal proceedings against the defendant or further competency proceedings, if required, as provided by Article 46.02 of this code.*

SECTION 3.06. Chapter 17, Code of Criminal Procedure, is amended by adding Article 17.032 to read as follows:

Art. 17.032. RELEASE ON PERSONAL BOND OF CERTAIN MENTALLY ILL DEFENDANTS. (a) *In this article, "violent offense" means an offense under the following sections of the Penal Code:*

(1) Section 19.02 (murder);

- (2) *Section 19.03 (capital murder);*
 - (3) *Section 20.03 (kidnapping);*
 - (4) *Section 20.04 (aggravated kidnapping);*
 - (5) *Section 21.11 (indecentcy with a child);*
 - (6) *Section 22.01(a)(1) (assault);*
 - (7) *Section 22.011 (sexual assault);*
 - (8) *Section 22.02 (aggravated assault);*
 - (9) *Section 22.021 (aggravated sexual assault);*
 - (10) *Section 22.04 (injury to a child, elderly individual, or invalid); or*
 - (11) *Section 29.03 (aggravated robbery).*
- (b) *A magistrate shall release a defendant on personal bond if the:*
- (1) *defendant is not charged with and has not been previously convicted of a violent offense;*
 - (2) *defendant is examined by a mental health expert under Section 3(b), Article 46.02 of this code;*
 - (3) *examining expert, in a report submitted to the magistrate under Section 3(d), Article 46.02, of this code:*
 - (A) *concludes that the defendant is mentally ill and is nonetheless competent to stand trial; and*
 - (B) *recommends mental health treatment for the defendant; and*
 - (4) *magistrate determines, in consultation with a local mental health services provider, that appropriate mental health services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health services provider.*
- (c) *The magistrate may require as a condition of release on personal bond under this article that the defendant submit to outpatient or inpatient mental health treatment if the defendant's:*
- (1) *mental illness is chronic in nature; or*
 - (2) *ability to function independently will continue to deteriorate if the defendant is not treated.*
- (d) *In addition to a condition of release imposed under Subsection (c) of this article, the magistrate may require the defendant to comply with other conditions that are reasonably necessary to protect the community.*
- (e) *In this article, a person is considered to have been convicted of an offense if:*
- (1) *a sentence is imposed;*
 - (2) *the person is placed on community supervision or receives deferred adjudication; or*
 - (3) *the court defers final disposition of the case.*
- SECTION 3.07. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.
- (b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 3.08. This article takes effect on September 1, 1994.

ARTICLE 4

SECTION 4.01. Article 42.12, Code of Criminal Procedure, is amended to read as follows:
 Art. 42.12. *COMMUNITY SUPERVISION* [~~ADULT PROBATION~~]

Sec. 1. PURPOSE. It is the purpose of this *article* [Article] to place wholly within the *state* [State] courts [of appropriate jurisdiction] the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of *community supervision* [probation], and the supervision of *defendants placed on community supervision* [probationers], in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is the purpose of this *article* [Article] to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of *community supervision* [probations] in the public interest.

Sec. 2. DEFINITIONS. In this *article* [Article]:

(1) "Court" means a court [~~"Courts" shall mean the courts~~] of record having original criminal jurisdiction.

(2) "Community supervision" means [~~"Probation" shall mean~~] the *placement* [supervised release] of a [convicted] defendant by a court under a continuum of programs and sanctions, with conditions imposed by the court for a specified period during which:

(A) criminal proceedings are deferred without an adjudication of guilt; or

(B) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part.

(3) "Supervision officer" means [~~"Probation officer" shall mean either~~] a person [duly] appointed or employed under Section 4, Article 42.131 of this code [by one or more courts of record having original criminal jurisdiction] to supervise defendants placed on *community supervision* [probation; or a person designated by such courts for such duties on a part-time basis].

[(4) "Probationer" means a defendant who is on probation.]

Sec. 3. JUDGE [COURT] ORDERED COMMUNITY SUPERVISION [PROBATION].

(a) A judge, in the best interest of justice, the public, and the defendant, after conviction or a plea of guilty or nolo contendere, may suspend the imposition of the sentence and place the defendant on community supervision or impose a fine applicable to the offense and place the defendant on community supervision.

(b) In a felony case the minimum period of community supervision is the same as the minimum term of imprisonment applicable to the offense and the maximum period of community supervision is 10 years.

(c) The maximum period of community supervision in a misdemeanor case is two years.

(d) A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article.

(e) A defendant is not eligible for community supervision under this section if the defendant:

(1) is sentenced to a term of imprisonment that exceeds 10 years; or

(2) is sentenced to serve a term of confinement under Section 12.35, Penal Code. [The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be subserved thereby, shall have the power, after conviction or a plea of guilty or nolo contendere for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. Except as otherwise provided by this section, in all felony cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. In a misdemeanor case in which confinement is imposed by the court or in a third-degree felony case punished under Section 12.34(a)(2), Penal Code, the period of probation shall be for a period of time not to exceed the maximum confinement applicable to the offense or two years, whichever period is

~~greater. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.]~~

Sec. 3g. LIMITATION ON JUDGE [COURT] ORDERED COMMUNITY SUPERVISION [PROBATION]. (a) The provisions of Section 3 of this article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

- (A) Section 19.02 (Murder);
- (B) Section 19.03 (Capital murder);
- (C) Section 21.11(a)(1) (Indecency with a child);
- (D) [(B)] Section 20.04 (Aggravated kidnapping);
- (E) [(C)] Section 22.021 (Aggravated sexual assault);
- (F) [(D)] Section 29.03 (Aggravated robbery); or

(2) to a defendant when it is shown that a deadly weapon as defined in Section 1.07[(a)(11)], Penal Code, was used or exhibited during the commission of a felony offense or during immediate flight therefrom, and that the defendant used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited. On an affirmative finding under this subdivision, the trial court shall enter the finding in the judgment of the court. On an affirmative finding that the deadly weapon was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding under Subsection (a)(2) in the trial of a felony of the second degree or higher that the deadly weapon used or exhibited was a firearm and the defendant is granted *community supervision* [probation], the court may order the defendant confined in the institutional division of the Texas Department of Criminal Justice for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the institutional division, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to *community supervision* [probation]. The institutional division shall release the defendant to *community supervision* [probation] after he has served 120 days.

Sec. 4. JURY RECOMMENDED COMMUNITY SUPERVISION [PROBATION]. (a) *A jury that imposes confinement as punishment for an offense may recommend to the judge that the judge suspend the imposition of the sentence and place the defendant on community supervision. A judge shall suspend the imposition of the sentence and place the defendant on community supervision if the jury makes that recommendation in the verdict.*

(b) *If the jury recommends to the judge that the judge place the defendant on community supervision, the judge shall place the defendant on community supervision for any period permitted under Section 3(b) or 3(c) of this article, as appropriate.*

(c) *A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article.*

(d) *A defendant is not eligible for community supervision under this section if the defendant:*

- (1) *is sentenced to a term of imprisonment that exceeds 10 years;*
- (2) *is sentenced to serve a term of confinement under Section 12.35, Penal Code; or*
- (3) *does not file a sworn motion under Subsection (e) of this section or for whom the jury does not enter in the verdict a finding that the information contained in the motion is true.*

(e) *A defendant is eligible for community supervision under this section only if before the trial begins the defendant files a written sworn motion with the judge that the defendant has not previously been convicted of a felony in this or any other state, and the jury enters in the verdict a finding that the information in the defendant's motion is true. [When there is a felony conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the*

~~offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury. This section does not apply to a defendant adjudged guilty of an offense under Section 481.122, Texas Controlled Substances Act (Chapter 481, Health and Safety Code), if it is shown on the trial of the offense that the defendant was 21 years of age or older at the time the offense was committed by his own conduct.~~

~~(b) Where there is a misdemeanor conviction in any court of this state and the punishment assessed by the jury shall be by imprisonment in jail or by a fine or by both such fine and imprisonment, the jury may recommend probation for a period of time not to exceed two years, upon sworn motion made therefor by the defendant, filed before the penalty stage of the trial begins. When the jury recommends probation, it may recommend that the imprisonment or fine or both such fine and imprisonment found in its verdict may be probated. When the trial is to a jury and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the defendant, before the trial began, had filed a sworn statement that the defendant has never before been convicted of a felony, and after conviction and before the penalty stage of the trial began, the defendant shall have filed a sworn motion for probation and the proof shall show and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other state. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but the defendant may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict.~~

~~(c) This section does not prohibit a court from granting probation in a case if the jury in the case does not recommend probation.]~~

Sec. 5. DEFERRED ADJUDICATION; COMMUNITY SUPERVISION. (a) Except as provided by Subsection (d) of this section, when in the judge's [its] opinion the best interest of society and the defendant will be served, the judge [court] may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on community supervision [probation]. The judge [court] shall inform the defendant orally or in writing of the possible consequences under Subsection (b) of this section of a violation of community supervision [probation]. If the information is provided orally, the judge [court] must record and maintain the judge's [court's] statement to the defendant. In a felony case, the period of community supervision [probation] may not exceed 10 years. In a misdemeanor case, the period of community supervision [probation] may not exceed two years. A judge may increase the maximum period of community supervision in the manner provided by Section 22(c) of this article. The judge [court] may impose a fine applicable to the offense and require any reasonable [terms and] conditions of community supervision, including mental health treatment under Section 11(d) of this article, that a judge could impose on a defendant placed on community supervision for a conviction that was probated and suspended, including confinement [probation]. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the judge [court] shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of community supervision [probation] imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 21 [24] of this article [Article]. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of

community supervision [probation], and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a *community supervision* [probationary] period imposed under Subsection (a) of this section, if the *judge* [court] has not proceeded to adjudication of guilt, the *judge* [court] shall dismiss the proceedings against the defendant and discharge him. The *judge* [court] may dismiss the proceedings and discharge the defendant prior to the expiration of the term of *community supervision* [probation] if in the *judge's* [its] opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:

(1) upon conviction of a subsequent offense, the fact that the defendant had previously received *community supervision with a deferred adjudication of guilt* [probation] shall be admissible before the court or jury to be considered on the issue of penalty; and

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received *community supervision with a deferred adjudication of guilt* [probation] under this section in issuing, renewing, denying, or revoking a license under that chapter.

(d) ~~In all other cases the judge may grant deferred adjudication unless the defendant is charged with an offense under Section 49.04, 49.05, 49.06, 49.07, or 49.08, Penal Code. [This section does not apply to a defendant charged with an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, an offense under Sections 481.107(b) through (e), 481.122, or 481.126, Health and Safety Code, an offense under Article 6701i-1, Revised Statutes, an offense under Section 34, Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), an offense under Section 32(e), Texas Motor Vehicle Safety Responsibility Act (Article 6701h, Vernon's Texas Civil Statutes), or an offense under Section 10, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).]~~

Sec. 6. CONTINUING COURT JURISDICTION IN FELONY CASES. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring *imprisonment* [confinement] in the *institutional division of the Texas Department of Criminal Justice* [Corrections] is imposed by the *judge of the court* shall continue for 180 days from the date the execution of the sentence actually begins. Before the expiration of 180 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant, suspend further execution of the sentence and place the defendant on *community supervision* [probation] under the terms and conditions of this article, if in the opinion of the judge the defendant would not benefit from further *imprisonment* [incarceration] and:

(1) the defendant is otherwise eligible for *community supervision* [probation] under this article; and

(2) the defendant had never before been incarcerated in a penitentiary serving a sentence for a felony; and

~~[(3) the offense for which the defendant was convicted was other than those defined by Section 19.02, 20.04, 22.021, 22.03, 22.04(a)(1), (2), or (3), 29.03, 36.02, 38.07, 71.02 or a felony of the second degree under Section 38.10, Penal Code].~~

~~(b) [If a court imposes a sentence under Section 12.34(a)(2), Penal Code, the period of time during which the court may suspend further execution of the sentence and place the defendant on probation runs from the 60th day after the date of sentencing until the date the sentence expires.~~

~~[(c)] When the defendant or the attorney representing the state files a written motion requesting suspension by the *judge* [court] of further execution of the sentence and placement of the defendant on *community supervision* [probation], and when requested to do so by the *judge* [court], the clerk of the court shall request a copy of the defendant's record while imprisoned [incarcerated] from the *institutional division of the Texas Department of Criminal Justice* [Corrections] or, if the defendant is confined [incarcerated] in county jail,~~

from the sheriff. Upon receipt of such request, the *institutional division of the Texas Department of Criminal Justice* [~~Corrections~~] or the sheriff shall forward to the *judge* [~~court~~], as soon as possible, a full and complete copy of the defendant's record while *imprisoned or confined* [~~incarcerated~~]. When the defendant files a written motion requesting suspension of further execution of the sentence and placement on *community supervision* [~~probation~~], he shall immediately deliver or cause to be delivered a true and correct copy of the motion to the office of the attorney representing the state.

(c) [(d)] The *judge* [~~court~~] may deny the motion without a hearing but may not grant the motion without holding a hearing and providing the attorney representing the state and the defendant the opportunity to present evidence on the motion.

~~[(e) If a court imposes punishment under Section 12.422, Penal Code, the jurisdiction of the court continues until the 30th day after the date the defendant is released from a substance abuse facility, for the purpose of allowing the court to place the defendant on probation under this article. A court may place the defendant on probation under this subsection on its own motion or on the motion of any party. If probation is imposed, the period of probation may not exceed the term of years imposed under Section 12.422(a)(2), Penal Code, and the court must impose as a condition of probation that the defendant participate in a drug or alcohol abuse after care program. If the court does not impose probation on the defendant within the time permitted under this subsection, the punishment under Section 12.422(a)(2), Penal Code, is automatically discharged.]~~

Sec. 7. CONTINUING COURT JURISDICTION IN MISDEMEANOR CASES. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for 180 days from the date the execution of the sentence actually begins [~~a period equal to the sentence imposed~~]. The judge of the court that imposed such sentence may on his own motion, on the motion of the attorney representing the state, or on the written motion of the defendant suspend further execution of the sentence and place the defendant on *community supervision* [~~probation~~] under the terms and conditions of this article, if [~~prior to the execution of that sentence the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and~~] in the opinion of the judge the defendant would not benefit from further *confinement* [~~incarceration~~].

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on *community supervision* [~~probation~~] or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while *confined* [~~incarcerated~~] from the agency operating the jail where the defendant is *confined* [~~incarcerated~~]. Upon receipt of such request, the agency operating the jail where the defendant is *confined* [~~incarcerated~~] shall forward to the court as soon as possible a full and complete copy of the defendant's record while *confined* [~~incarcerated~~].

(c) The *judge* [~~court~~] may deny the motion without a hearing but may not grant a motion without holding a hearing and allowing the attorney representing the state and the defendant to present evidence in the case.

Sec. 8. STATE BOOT CAMP PROGRAM [~~ALTERNATIVE INCARCERATION PROBATION~~]. (a) For the purposes of this section, the jurisdiction of a court in which a sentence requiring *imprisonment* [~~confinement~~] in the institutional division of the Texas Department of Criminal Justice is imposed for conviction of a felony shall continue for 90 days from the date on which the convicted person is received into custody by the institutional division. After the expiration of 75 days but prior to the expiration of 90 days from the date on which the convicted person is received into custody by the institutional division, the judge of the court that imposed the sentence may suspend further execution of the sentence imposed and place the person on *community supervision* [~~probation~~] under the terms and conditions of this article, if in the opinion of the judge the person would not benefit from further *imprisonment* [~~incarceration in a penitentiary~~]. The court shall clearly indicate in its order recommending the placement of the person in the *state boot camp* [~~alternative incarceration~~] program that the court is not retaining jurisdiction over the person for the purposes of Section 6 of this article. A court may recommend a person for placement in the *state boot camp* [~~alternative incarceration~~] program only if:

(1) the person is otherwise eligible for *community supervision* [probation] under this article;

(2) the person is 17 years of age or older but younger than 26 years and *is physically and mentally capable of participating in a program* [does not have a physical or mental handicap] that *requires* [precludes] strenuous physical activity; and

(3) the person *is not convicted of an offense punishable as a state jail felony* [had never before been incarcerated in a federal penitentiary or penitentiary of this or any other state or has never been paroled from a county or municipal jail while awaiting transfer to a penitentiary].

(b) On the 76th day after the day on which the convicted person is received into custody by the institutional division, the institutional division shall send the convicting court the record of the person's progress, conduct, and conformity to institutional division rules.

(c) The *judge's* [court's] recommendation that a person be placed in *the state boot camp* [an alternative incarceration] program created under Section 499.052, Government Code, does not give the court the power to hold the Texas Department of Criminal Justice or any officer or employee of the department in contempt of court for failure to adhere to that recommendation.

Sec. 9. PRESENTENCE INVESTIGATIONS. (a) *Except as provided by Subsection (g) of this section, before* [Before] the imposition of sentence by a *judge* [the court] in a felony case, and except as provided by Subsection (b) of this section, before the imposition of sentence by a *judge* [the court] in a misdemeanor case the *judge* [court] shall direct a *supervision* [probation] officer to report to the *judge* [court] in writing on the circumstances of the offense with which the defendant is charged, the amount of restitution necessary to adequately compensate a victim of the offense, the criminal and social history of the defendant, and any other information relating to the defendant or the offense requested by the *judge* [court]. It is not necessary that the report contain a sentencing recommendation, but the report must contain a proposed client supervision plan describing programs and sanctions that the community supervision and corrections department would provide the defendant if the *judge suspended the imposition of the sentence or granted deferred adjudication* [defendant were granted probation].

(b) The *judge* [court] is not required to direct a *supervision* [probation] officer to prepare a report in a misdemeanor case if:

(1) the defendant requests that a report not be made and the *judge* [court] agrees to the request; or

(2) the *judge* [court] finds that there is sufficient information in the record to permit the meaningful exercise of sentencing discretion and the *judge* [court] explains this finding on the record.

(c) The *judge* [court] may not inspect a report and the contents of the report may not be disclosed to any person unless:

(1) the defendant pleads guilty or nolo contendere or is convicted of the offense; or

(2) the defendant, in writing, authorizes the judge to inspect the report.

(d) Before sentencing a defendant, the *judge* [court] shall permit the defendant or his counsel to read the presentence report.

(e) The *judge* [court] shall allow the defendant or his attorney to comment on the report and, with the approval of the *judge* [court], introduce testimony or other information alleging a factual inaccuracy in the report.

(f) The *judge* [court] shall allow the attorney representing the state access to any information made available to the defendant under this section.

(g) *Unless requested by the defendant, a judge is not required to direct an officer to prepare a presentence report in a felony case under this section if:*

(1) *punishment is to be assessed by a jury;*

(2) *the defendant is convicted of or enters a plea of guilty or nolo contendere to capital murder;*

(3) *the only available punishment is imprisonment; or*

(4) the judge is informed that a plea bargain agreement exists, under which the defendant agrees to a punishment of imprisonment, and the judge intends to follow the agreement [The probation officer making a report under this section shall send a copy of the report to an institution to which the defendant is committed].

(h) On a determination by the *judge [court]* that alcohol or drug abuse may have contributed to the commission of the offense, the *judge [court]* shall direct a *supervision [probation]* officer approved by the *community supervision and corrections [probation]* department or the *judge [court]* or a person, program, or other agency approved by the Texas Commission on Alcohol and Drug Abuse, to conduct an evaluation to determine the appropriateness of, and a course of conduct necessary for, alcohol or drug rehabilitation for a defendant and to report that evaluation to the *judge [court]*. The evaluation shall be made:

- (1) after arrest and before conviction, if requested by the defendant;
- (2) after conviction and before sentencing, if the *judge [court]* assesses punishment in the case;
- (3) after sentencing and before the entry of a final judgment, if the jury assesses punishment in the case; or
- (4) after *community supervision [probation]* is granted, if the evaluation is required as a condition of *community supervision [probation]* under Section 13 of this article.

(i) A presentence investigation conducted on any *defendant [offender]* convicted of a felony offense who appears to the *judge [court]* through its own observation or on suggestion of a party to have a mental impairment shall include a psychological evaluation which determines, at a minimum, the defendant's IQ and adaptive behavior score. The results of the evaluation shall be included in the report to the *judge [court]* as required by Subsection (a) of this section.

(j) The *judge [court]* by order may direct that any information and records that are not privileged and that are relevant to the report required by Subsection (a) of this section be released to the officer conducting the presentence investigation under Subsection (i) of this section. The *judge [court]* may also issue a subpoena to obtain that information. The report and all information obtained in connection with the presentence investigation are confidential and may be released only to those persons and under those circumstances authorized under Subsections (d), (e), (f), and (g) of this section and as directed by the *judge [court]* for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be kept separate from the defendant's *community supervision [probation]* file and may be released only by order of the *judge [court]*.

(k) If a presentence report in a felony case is not required under this section, the judge shall direct the officer to prepare a postsentence report containing the same information that would have been required for the presentence report, other than a proposed client supervision plan and any information that is reflected in the judgment. The officer shall send the postsentence report to the clerk of the court not later than the 30th day after the date on which sentence is pronounced or deferred adjudication is granted, and the clerk shall file the postsentence report with the papers in the case.

Sec. 10. **AUTHORITY TO IMPOSE, MODIFY, OR REVOKE COMMUNITY SUPERVISION [PROBATION].** (a) Only the court in which the defendant was tried may grant *community supervision [probation]*, impose conditions, revoke the *community supervision [probation]*, or discharge the defendant, unless the court has transferred jurisdiction of the case to another court with the latter's consent. Except as provided by Subsection (d) of this section, only the court may alter conditions of *community supervision [probation]*. In a felony case, only the judge who originally sentenced the defendant may suspend execution thereof and place the defendant under *community supervision [probation]* pursuant to Section 6 of this article. *If [except that if] the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and the judge who originally sentenced the defendant is deceased or disabled or if the office is vacant and a motion is filed in accordance with Section 6 of this article, the clerk of the court shall promptly forward a copy of the motion to the presiding judge of the administrative judicial district for that court, who may deny the motion without a hearing or appoint a judge to hold a hearing on the motion.*

(b) After a defendant has been placed on *community supervision* [probation], jurisdiction of the case may be transferred to a court of the same rank in this *state* [State] having geographical jurisdiction where the defendant is residing or where a violation of the conditions of *community supervision* [probation] occurs. Upon transfer, the clerk of the court of original jurisdiction shall forward a transcript of such portions of the record as the transferring judge shall direct to the court accepting jurisdiction, which latter court shall thereafter proceed as if the trial and conviction had occurred in that court.

(c) Any *judge of a court* having geographical jurisdiction where the defendant is residing or where a violation of the conditions of *community supervision* [probation] occurs may issue a warrant for his arrest, but the determination of action to be taken after arrest shall be only by the *judge of the court* having jurisdiction of the case at the time the action is taken.

(d) A *judge* [court] that places a defendant on *community supervision* [probation] may authorize the *supervision* [probation] officer supervising the *defendant* [probationer] or a magistrate appointed by the district courts in the county that give preference to criminal cases to modify the conditions of *community supervision* [probation] for the limited purpose of transferring the *defendant* [probationer] to different programs within the *community supervision continuum of programs and sanctions* [probation program].

(e) If a *supervision* [probation] officer or magistrate modifies the conditions of *community supervision* [probation], the [probation] officer or magistrate shall deliver a copy of the modified conditions to the *defendant* [probationer], shall file a copy of the modified conditions with the sentencing court, and shall note the date of delivery of the copy in the *defendant's* [probationer's] file. If the *defendant* [probationer] agrees to the modification in writing, the [probation] officer or magistrate shall file a copy of the modified conditions with the district clerk and the conditions shall be enforced as modified. If the *defendant* [probationer] does not agree to the modification in writing, the *supervision* [probation] officer or magistrate shall refer the case to the *judge of the court* for modification [by the judge] in the manner provided by Section 22 [24] of this article.

~~[(j-3) The judges of the county courts at law in Hidalgo County shall participate in the management of the probation department serving the county, and for that purpose have the same duties and powers imposed by this section as do the district judges trying criminal cases in the county. The probation department may obtain criminal history record information (CHRI) relating to an applicant for employment with the department that is maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or any other law enforcement agency. The information obtained under this subsection is for the exclusive use of the department and is privileged and confidential. The information may not be released or otherwise disclosed except on court order or consent of the applicant.]~~

~~[Sec. 10A. (j) Except as provided in Subsection (k) of this section on satisfactory completion by a probationer of the required amount of community service restitution work and full payment of restitution as ordered by the court, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that:~~

~~[(1) on conviction of a subsequent offense the fact that the defendant previously received community service probation is admissible on the issue of penalty; and~~

~~[(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received probation under this section in issuing, renewing, denying, or revoking a license under that chapter.]~~

~~[Sec. 10B. EL PASO COUNTY PRETRIAL DIVERSION PROGRAM. (a) As a condition for a defendant to enter any pretrial diversion program or the functional equivalent that may be operated in El Paso County by the West Texas Regional Adult Probation Department or a county or district attorney of El Paso County, a defendant must file in the court in which the charges are pending a sworn waiver of speedy trial motion requesting the court to approve without a hearing the defendant's waiver of his speedy trial rights under the constitution and other law. If the court approves the waiver, the defendant is eligible for consideration for acceptance into a pretrial diversion program or equivalent program.]~~

~~[(b) At the time the motion to waive speedy trial rights required by Subsection (a) of this section is filed, the court clerk shall collect a \$125 filing fee unless the court for good cause or otherwise waives the fee or any part of the fee under guidelines that may be set by the El Paso Council of Judges. The filing fee is nonrefundable.~~

~~[(c) The fees collected by the court clerk under Subsection (b) of this section shall be deposited in the general fund of the county treasury as provided by Chapter 113, Local Government Code.]~~

Sec. 11. BASIC CONDITIONS OF COMMUNITY SUPERVISION [PROBATION]. (a) The judge of the court having jurisdiction of the case shall determine the ~~[terms and]~~ conditions of community supervision [probation] and may, at any time, during the period of community supervision [probation] alter or modify the conditions as provided by Sections 10 and 22 of this article~~[- provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket].~~ The judge may impose any reasonable condition that is designed to protect or restore the community, protect or restore the victim, or punish, rehabilitate, or reform the defendant. Conditions ~~[Terms and conditions]~~ of community supervision [probation] may include, but shall not be limited to, the conditions that the defendant ~~[probationer]~~ shall:

(1) Commit no offense against the laws of this State or of any other State or of the United States;

(2) Avoid injurious or vicious habits;

(3) Avoid persons or places of disreputable or harmful character;

(4) Report to the supervision [probation] officer as directed by the judge or supervision [probation] officer and obey all rules and regulations of the community supervision and corrections [probation] department;

(5) Permit the supervision [probation] officer to visit him at his home or elsewhere;

(6) Work faithfully at suitable employment as far as possible;

(7) Remain within a specified place;

(8) Pay his fine, if one be assessed, and all court costs whether a fine be assessed or not, in one or several sums, and make restitution or reparation in any sum that the judge [court] shall determine;

(9) Support his dependents;

(10) Participate, for a time specified by the judge [court] in any community-based program, including a community-service work program under Section 16 of this article ~~[designated by the court];~~

(11) Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed, or if he was represented by a county-paid public defender, in an amount that would have been paid to an appointed attorney had the county not had a public defender;

(12) Remain under custodial supervision in a community corrections ~~[community-based]~~ facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

(13) Pay a percentage of his income to his dependents for their support while under custodial supervision ~~[suspension]~~ in a community corrections ~~[community-based]~~ facility;

(14) Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense;

(15) Submit to testing for alcohol or controlled substances;

(16) Attend counseling sessions for substance abusers or participate in substance abuse treatment services in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse~~[- if the person was sentenced for an offense involving controlled substances or the court determines that the defendant's use of controlled substances was connected to the commission of the offense];~~

(17) Register under Article 6252-13c.1, Revised Statutes; ~~[and]~~

(18) With the consent of the victim of a misdemeanor offense or of any offense under Title 7, Penal Code, participate in victim-defendant mediation for the purpose of making restitution to the victim;

(19) *Submit to electronic monitoring;*

(20) *Reimburse the crime victims compensation fund created under the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) for any amounts paid from that fund to a victim, as defined by Article 56.01 of this code, of the defendant's offense;*

(21) *Reimburse a law enforcement agency for the analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense;*

(22) *Pay all or part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense; and*

(23) *Make one payment in an amount not to exceed \$50 to a local crime stoppers program as defined by Section 414.001, Government Code, and as certified by the Crime Stoppers Advisory Council.*

(b) A judge [court] may not order a defendant [probationer] to make any payments as a term or condition of community supervision [probation], except for fines, court costs, restitution to the victim, and other [terms or] conditions related personally to the rehabilitation of the defendant [probationer] or otherwise expressly authorized by law. The court shall consider the ability of the defendant [probationer] to make payments in ordering the defendant [probationer] to make payments under this article.

~~(c) [In addition to any other terms and conditions of probation, the court may require a probationer to reimburse the crime victims compensation fund created under the Crime Victims Compensation Act (Article 8309-1, Vernon's Texas Civil Statutes) for any amounts paid from that fund to a victim of the probationer's offense. In this subsection, "victim" has the meaning assigned by Article 56.01 of this code.]~~

~~[(e) If a court grants probation to a person convicted of an offense under Chapter 481, Health and Safety Code, the court may order the person to reimburse a law enforcement agency for the agency's expenses for the confiscation, analysis, storage, or disposal of raw materials, controlled substances, chemical precursors, drug paraphernalia, or other materials seized in connection with the offense.]~~

~~[(e) A court may not order a probationer to make any payments as a term and condition of probation, except for fines, court costs, restitution of the victim, payment to a local crime stoppers program under Subsection (h) of this section, and other terms and conditions expressly authorized by statute.]~~

~~[(f) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may, on a finding that the probationer is financially able to make payment, require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense or for counseling and education relating to acquired immune deficiency syndrome or human immunodeficiency virus made necessary by the offense. Any payments ordered under this subsection may not extend past one year from the date of the order.]~~

[(g) If the judge [court] or jury places a defendant on community supervision [grants probation to a person], the judge [court] shall require the defendant [person] to demonstrate to the court whether the defendant [person] has an educational skill level that is equal to or greater than the average skill level of students who have completed the sixth grade in public schools in this state. If the judge [court] determines that the defendant [person] has not attained that skill level, the judge [court] shall require as a condition of community supervision [probation] that the defendant [person] attain that level of educational skill, unless the judge [court] determines that the defendant [person] lacks the intellectual capacity or the learning ability to ever achieve that level of skill.]

(d) *If the judge places a defendant on community supervision and the defendant is determined to be mentally ill by an examining expert under Section 3, Article 46.02, of this code or in a psychological evaluation conducted under Section 9(i) of this article, the judge may require the defendant as a condition of community supervision to submit to outpatient or inpatient mental health treatment if the:*

(1) *defendant's:*

(A) *mental illness is chronic in nature; or*

(B) *ability to function independently will continue to deteriorate if the defendant is not treated; and*

(2) *judge determines, in consultation with a local mental health services provider, that appropriate mental health services for the defendant are available through the Texas Department of Mental Health and Mental Retardation under Section 534.053, Health and Safety Code, or through another mental health services provider.*

~~[(g) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 43.02, Penal Code, the court may require the probationer to receive counseling or education, or both relating to acquired immune deficiency syndrome or human immunodeficiency virus.~~

~~[(g) On any evidence of the presence of a controlled substance in the defendant's body, or on any evidence the defendant has used a controlled substance, or on evidence that controlled substance use is related to the offense for which the defendant was placed on probation, the court shall require as a condition of probation that the defendant submit to testing for controlled substances in the defendant's body.~~

~~[(h) In addition to any other terms and conditions imposed under this section, the court may require the probationer as a condition of his probation to make one payment in an amount not to exceed \$50 to a local crime stoppers program as defined by Section 414.001(2), Government Code, and as certified by the Crime Stoppers Advisory Council. In imposing the condition, the court shall consider the ability of the probationer to make the payment and the effectiveness and fiscal responsibility of the local crime stoppers program.~~

~~[(h) If the court grants probation to a person convicted of an offense under the Texas Controlled Substances Act (Article 4476-15, Vernon's Texas Civil Statutes), the court may require the probationer to receive counseling or education, or both, relating to acquired immune deficiency syndrome or human immunodeficiency virus. The court shall order that a report be made under Section 4 of this article to determine if the probationer should receive the counseling and education.]~~

Sec. 12. **CONFINEMENT [DETENTION] AS A CONDITION OF COMMUNITY SUPERVISION [PROBATION].** (a) *If a judge [When the court] having jurisdiction of a misdemeanor case requires [grants probation to the defendant, the court may require] as a condition of community supervision [probation] that the defendant submit to a period of confinement [detention] in a county jail, the period of confinement may [or community corrections facility to serve a term of imprisonment] not [to] exceed 30 days [and serve up to 100 hours of community service]. If a judge havin, jurisdiction of [In] a felony case requires [the court may require] as a condition of community supervision [probation] that the defendant submit to a period of confinement [detention] in a county jail, the period of confinement may [to serve a term of imprisonment] not [to] exceed 180 days[. A court granting probation to a defendant convicted of an offense under Section 71.02, Penal Code, may require as a condition of probation that the defendant submit to 180 days detention in the county jail or community corrections facility and serve up to 200 hours of public service in addition to any other penalty prescribed by law].*

(b) *A judge that requires as a condition of community supervision that the defendant serve a term in a community corrections facility under Section 18 of this article may not impose a term of confinement under this section that, when added to the term imposed under Section 18, exceeds 24 months.*

(c) *A judge may impose confinement as a condition of community supervision under Subsection (a) of this section on placing the defendant on supervision or at any time during the supervision period. The judge may impose periods of confinement as a condition of community supervision in increments smaller than the maximum periods provided by*

Subsection (a) of this section but may not impose periods of confinement that if added together exceed the maximum periods provided by Subsection (a).

Sec. 13. DWI COMMUNITY SUPERVISION [PROBATION]. (a) A judge [court] granting community supervision [probation] to a defendant convicted of an offense under Chapter 49, Penal Code, [Article 6701-1, Revised Statutes, and punished under Subsection (d), (e), or (f) of that article] shall require as a condition of community supervision [probation] that the defendant submit to:

(1) *not less than 72 hours of continuous confinement [detention in a jail] if the defendant was punished [convicted] under Section 49.09(a) [Subsection (d) of Article 6701-1, Revised Statutes]; not less than 10 days of continuous confinement [detention in a jail] if the defendant was punished [convicted] under Section 49.09(b) or (c) [Subsection (e) of Article 6701-1, Revised Statutes]; or not less than 30 days of continuous confinement [detention in a jail] if the defendant was convicted under Section 49.07 [Subsection (f) of Article 6701-1, Revised Statutes]; and*

(2) an evaluation by a supervision [probation] officer or by a person, program, or facility approved by the Texas Commission on Alcohol and Drug Abuse for the purpose of having the facility prescribe and carry out a course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition.

(b) A judge [court] granting community supervision [probation] to a defendant convicted of an offense under [Subdivision (2), Subsection (a),] Section 49.08 [19.05], Penal Code, shall require as a condition of community supervision [probation] that the defendant submit to a period of [detention in a penal institution to serve a term of] confinement of not less than 120 days.

(c) If the director of a facility to which a defendant [person] is referred under Subdivision (2) of Subsection (a) of this section determines that the defendant [person] is not making a good faith effort to participate in a program of rehabilitation, the director shall notify the judge [court] that referred the defendant [person] of that fact.

(d) If a judge [court] requires as a condition of community supervision [probation] that the defendant participate in a prescribed course of conduct necessary for the rehabilitation of the defendant's drug or alcohol dependence condition, the judge [court] shall require that the defendant pay for all or part of the cost of such rehabilitation based on the defendant's ability to pay. The judge [court] may, in its discretion, credit such cost paid by the defendant against the fine assessed. In making a determination of a defendant's ability to pay the cost of rehabilitation under this subsection, the judge [court] shall consider whether the defendant has insurance coverage that will pay for rehabilitation.

(e) The confinement [imprisonment] imposed shall be treated as a condition of community supervision [probation], and in the event of a sentence of confinement [imprisonment] upon the revocation of community supervision [probation], the term of imprisonment served hereunder shall be credited toward service of such subsequent confinement [imprisonment].

(f) If a judge [court] grants community supervision [probation] to a defendant convicted of an offense under Sections 49.04-49.08, Penal Code [Article 6701-1, Revised Statutes, and punished under Subsection (e) of that article], and if before receiving community supervision [probation] the defendant has not submitted to an evaluation under Section 9 of this article, the judge [court] shall require the defendant to submit to the evaluation as a condition of community supervision [probation]. If the evaluation indicates to the judge [court] that the defendant is in need of treatment for drug or alcohol dependency, the judge [court] shall require the defendant to submit to that treatment as a condition of community supervision [probation] in a program or facility approved or licensed by the Texas Commission on Alcohol and Drug Abuse or in a program or facility that complies with standards established by the community justice assistance division of the Texas Department of Criminal Justice, after consultation by the division with the commission.

(g) A jury that recommends community supervision [probation] for a person convicted of an offense under Sections 49.04-49.08, Penal Code [Article 6701-1, Revised Statutes, and punished under Subsection (e) of that article], may recommend that any driver's license issued to the defendant under Chapter 173, Acts of the 47th Legislature, Regular Session,

1941 (Article 6687b, Vernon's Texas Civil Statutes), not be suspended only if the defendant was 21 years of age or older at the time of the commission of the offense.

(h) If a person convicted of an offense under Sections 49.04–49.08, Penal Code [~~Article 67011–1, Revised Statutes, is punished under Subsection (c) of that article and~~] is placed on community supervision [probation], the judge [court] shall require, as a condition of the community supervision [probation], that the defendant attend and successfully complete before the 181st day after the day community supervision [probation] is granted an educational program jointly approved by the Texas Commission on Alcohol and Drug Abuse, the Department of Public Safety, the Traffic Safety Section of the Texas [State] Department of [Highways and Public] Transportation, and the community justice assistance division of the Texas Department of Criminal Justice [Texas Adult Probation Commission] designed to rehabilitate persons who have driven while intoxicated. The Texas Commission on Alcohol and Drug Abuse shall publish the jointly approved rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs and may charge a nonrefundable application fee for the initial certification of approval and for renewal of a certificate. The judge may waive the educational program requirement, however, if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider but is not limited to: the defendant's [offender's] school and work schedule, the defendant's [offender's] health, the distance that the defendant [offender] must travel to attend an educational program, and the fact that the defendant [offender] resides out of state, has no valid driver's license, or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant [person] is required, as a condition of community supervision [probation], to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the person's driving record. The report must include the beginning date of the person's community supervision [probation]. Upon the successful completion of the educational program, the person shall give notice to the community supervision and corrections [probation] department. The [probation] department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the defendant's [person's] driving record. If the department does not receive notice that a defendant [person] required to complete an educational program has successfully completed the program within the period required by this section, as shown on department records, the department shall suspend the defendant's [person's] driver's license, permit, or privilege or prohibit the person from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes). This subsection does not apply to a defendant if a jury recommends community supervision [probation] for the defendant and also recommends that the defendant's driver's license not be suspended.

(i) If a defendant [person] convicted of an offense under Sections 49.04–49.08 [~~Article 67011–1, Revised Statutes, or Section 19.05(a)(2)~~], Penal Code, is placed on community supervision [probation], the judge [court] may require as a condition of community supervision [probation] that the defendant not operate a motor vehicle unless the vehicle is equipped with a device that uses a deep-lung breath analysis mechanism to make impractical the operation of the motor vehicle if ethyl alcohol is detected in the breath of the operator. The judge [court] shall require the defendant to obtain the device at his own cost. The Department of Public Safety shall approve devices for use under this subsection. The provisions of Section 23A(f), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), apply to the approval of a device under this subsection and the consequences of that approval. Notwithstanding the provisions of this section, if a defendant [person] is required to operate a motor vehicle in the course and scope of the defendant's [person's] employment and if the vehicle is owned by the employer, the defendant [person] may operate that vehicle without installation of an approved ignition interlock device if the employer has been notified of that driving privilege restriction and if proof of that notification is with the vehicle. This employment exemption does not apply,

however, if the business entity that owns the vehicle is owned or controlled by the *defendant* [~~person~~] whose driving privilege has been restricted.

(j) The judge shall [~~court may~~] require [~~or permit~~] a *defendant* [~~person~~] who is *punished* [~~was previously convicted of an offense~~] under Section 49.09, Penal Code, [~~Article 6701-1, Revised Statutes, and who was required to attend an educational program under Subsection (h) of this section~~] as a condition of *community supervision* [~~probation~~], to attend and successfully complete, before the end of the defendant's period of driver's license suspension, an educational program [~~under Subsection (h) of this section with a curriculum~~] for repeat offenders approved by the Texas Commission on Alcohol and Drug Abuse [~~if the court determines that attendance at a program would be in the person's best interest~~]. The Texas Commission on Alcohol and Drug Abuse shall adopt rules and shall monitor, coordinate, and provide training to persons providing the educational programs. The Texas Commission on Alcohol and Drug Abuse is responsible for the administration of the certification of approved educational programs. The judge may waive the educational program requirement only if the defendant by a motion in writing shows good cause. In determining good cause, the judge may consider the defendant's school and work schedule, the defendant's health, the distance that the defendant must travel to attend an educational program, and whether the defendant resides out of state or does not have access to transportation. The judge shall set out the finding of good cause in the judgment. If a defendant is required, as a condition of community supervision, to attend an educational program, the court clerk shall immediately report that fact to the Department of Public Safety, on a form prescribed by the department, for inclusion in the defendant's driving record. The report must include the beginning date of the defendant's community supervision. On the successful completion of the educational program for repeat offenders, the defendant shall give notice to the community supervision and corrections department. The community supervision and corrections department shall then forward the notice to the court clerk. The court clerk shall then report the date of successful completion of the educational program to the Department of Public Safety for inclusion in the defendant's driving record. If the Department of Public Safety does not receive notice that a defendant required to complete an educational program has successfully completed the program for repeat offenders within the period required by this section, as shown on department records, the department shall continue the suspension of the defendant's driver's license, permit, or privilege or prohibit the defendant from obtaining a license or permit, as provided by Section 24(g)(2), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes).

(k) Notwithstanding Section 24(g), Chapter 173, Acts of the 47th Legislature, Regular Session, 1941 (Article 6687b, Vernon's Texas Civil Statutes), if the judge [~~court~~], under Subsection (h) or (j) of this section, permits or requires a *defendant punished under Section 49.09, Penal Code, [person]* to attend an educational program as a condition of *community supervision* [~~probation~~], and the *defendant* [~~person has previously been convicted of an offense under Article 6701-1, Revised Statutes, and~~] has previously been required to attend such a program, the judge [~~court~~] nonetheless shall automatically suspend the driver's license, permit, or operating privilege of that person for a period determined by the judge [~~court~~] according to the following schedule:

(1) not less than 90 days or more than 365 days, if the *defendant* [~~person~~] is *convicted* [~~punished~~] under Sections 49.04-49.08, Penal Code [~~Subsection (e), Article 6701-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article~~]; or

(2) not less than 180 days or more than two years, if the *defendant* [~~person~~] is *punished* under Section 49.09, Penal Code [~~Subsection (d) or (e), Article 6701-1, Revised Statutes, whether or not the punishment is increased under Subsection (f) of that article~~].

(l) If the Department of Public Safety receives notice that a *defendant* [~~person~~] has been required or permitted to attend an educational program under Subsection (h) of this section, but the judge [~~court~~] has not ordered a period of suspension, the department shall suspend the *defendant's* [~~person's~~] driver's license, permit, or operating privilege, or shall issue an order prohibiting the *defendant* [~~person~~] from obtaining a license or permit for a period of 365 days.

Sec. 14. **SUBSTANCE ABUSE FELONY PROGRAM.** (a) If a court places a defendant on community supervision under any provision of this article as an alternative to imprisonment, the judge may require as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility operated by the Texas Department of Criminal Justice under Section 493.009, Government Code. A term of confinement and treatment imposed under this section must be an indeterminate term of not more than one year or less than six months.

(b) A judge may impose the condition of community supervision created under this section if:

- (1) the judge places the defendant on community supervision under this article;
- (2) the defendant is charged with or convicted of a felony other than a felony under Section 21.11, 22.011, 22.021, or 25.06, Penal Code; and

(3) the judge makes an affirmative finding that:

(A) drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and

(B) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code.

(c) If a judge requires as a condition of community supervision that the defendant serve a term of confinement and treatment in a substance abuse treatment facility under this section, the judge shall also require as a condition of community supervision that on release from the facility the defendant participate in a drug or alcohol abuse continuum of care treatment plan.

(d) The Texas Commission on Alcohol and Drug Abuse shall develop the continuum of care treatment plan. ~~[CHILD ABUSERS AND SEX OFFENDERS; SPECIAL CONDITIONS. (a) If the court grants probation to a person convicted of an offense described by Article 17.41(a) of this code, the court may require as a condition of probation that the defendant not directly communicate with the victim of the offense or go near a residence, school, or other location, as specifically described in the copy of terms and conditions, frequented by the victim. In imposing the condition, the court may grant the defendant supervised access to the victim. To the extent that a condition imposed under this subsection conflicts with an existing court order granting possession of or access to a child, the condition imposed under this subsection prevails for a period specified by the court granting probation, not to exceed 90 days.~~

~~[(b) If the court grants probation to a person convicted of an offense under Section 21.11, 22.011, 22.021, or 22.04, Penal Code, the court may require the probationer to attend psychological counseling sessions at the direction of the probation officer and may require the probationer to pay all or a part of the reasonable and necessary costs incurred by the victim for psychological counseling made necessary by the offense, upon a finding that the probationer is financially able to make payment. Any payments ordered under this subsection may not extend past one year from the date of the order.]~~

Sec. 15. **PROCEDURES RELATING TO STATE JAIL FELONY COMMUNITY SUPERVISION.** (a) On conviction of a state jail felony, the judge shall suspend the imposition of the sentence of confinement and place the defendant on community supervision. The judge may suspend in whole or in part the imposition of any fine imposed on conviction.

(b) The minimum period of community supervision a judge may impose under this section is two years. The maximum period of community supervision a judge may impose under this section is five years. A judge may extend a period of community supervision under this section at any time during the period of community supervision, or if a motion for revocation of community supervision is filed before the period of community supervision ends, before the first anniversary of the expiration of the period of community supervision.

(c) A judge may impose any condition of community supervision on a defendant that the judge could impose on a defendant placed on supervision for an offense other than a state jail felony, except that the judge may impose on the defendant a condition that the defendant submit to a period of confinement in a county jail under Section 12 of this article only if the

term does not exceed 90 days, or does not exceed 60 days if the defendant previously has been convicted of a felony.

(d) A judge may impose as a condition of community supervision that a defendant submit at the beginning of the period of community supervision to a term of confinement in a state jail felony facility for a term not to exceed 60 days, or 180 days if the defendant previously has been convicted of a felony, or one year if the defendant is convicted of an offense punishable as a state jail felony under Section 481.112, Health and Safety Code, or the defendant previously has been convicted of two or more felonies. A judge may not require a defendant to submit to both the term of confinement authorized by this subsection and a term of confinement under Section 12 of this article. For the purposes of this subsection, a defendant previously has been convicted of a felony regardless of whether the sentence for the previous conviction was actually imposed or was probated and suspended.

(e) If a defendant violates a condition of community supervision imposed on the defendant under this article and after a hearing under Section 21 of this article the judge modifies the defendant's community supervision, the judge may impose any sanction permitted by Section 22 of this article, except that the judge may not require a defendant to serve a period of confinement in a state jail felony facility as a modification of the defendant's community supervision.

(f) If a defendant violates a condition of community supervision imposed on the defendant under this article and after a hearing under Section 21 of this article the judge revokes the defendant's community supervision, the judge shall dispose of the case in the manner provided by Section 23 of this article. The court retains jurisdiction over the defendant until the first anniversary of the date the defendant is received into the custody of a state jail. At any time after the 75th day after the date the defendant is received into the custody of a state jail and before the first anniversary of the date the defendant is received into the custody of a state jail, the judge on the judge's own motion, on the motion of the attorney representing the state, or on the motion of the defendant may suspend further execution of the sentence and place the defendant on community supervision under the conditions of this section.

(g) The facility director of a state jail felony facility shall report to a judge who orders a defendant confined in the facility not less than every 90 days on the defendant's programmatic progress, conduct, and conformity to the rules of the facility.

(h)(1) A defendant confined in a state jail felony facility after revocation of community supervision does not earn good conduct time for time served in the facility.

(2) A judge may credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision time served by the defendant in county jail:

(A) from the time of the defendant's arrest and confinement until sentencing by the trial court;

(B) as a condition of community supervision under Subsection (d) of this section; and

(C) after modification of community supervision.

(3) A judge shall credit against any time a defendant is subsequently required to serve in a state jail felony facility after revocation of community supervision any time served by the defendant in a state jail felony facility after sentencing. ~~RESTITUTION. (a) If a payment is received under Section 6(a)(8) or (a)(14) of this article from a probationer for transmittal to a victim of an offense, the probation department that receives the payment for disbursement to the victim shall deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.~~

~~[(a) If the court requires a probationer to make restitution to a victim of the probationer's offense, and a payment is received under this article from the probationer for transmittal to a victim of the offense, the probation department that receives the payment for disbursement to the victim shall immediately deposit the payment in an interest-bearing account in the department having original jurisdiction. The department shall transmit the payment to the victim as soon as practicable.]~~

~~[(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim, the probation department shall notify the victim of that fact by certified mail, mailed to the last known address of the victim. If after receiving notice, a victim makes a claim for payment, the probation department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which a probation department mails notice under this subsection, if the victim has not made a claim for payment, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.]~~

~~[(b) If a victim cannot be located, immediately after receiving a final payment in satisfaction of an order of restitution for the victim the probation department shall attempt to notify the victim of that fact by certified mail, mailed to the last known address of the victim. If a victim then makes a claim for payment, the probation department promptly shall remit the payment to the victim. Not earlier than the fifth anniversary of the date on which a probation department mails notice under this subsection, if the victim has not made a claim for payment, the probation department shall transfer the payment from the interest-bearing account to the comptroller of public accounts, after deducting five percent of the payment as a collection fee and deducting any interest accrued on the payment. The comptroller shall deposit the payment in the state treasury to the credit of the compensation to victims of crime auxiliary fund.]~~

~~[(e) The collection fee under Subsection (b) of this section and the accrued interest under Subsections (a) and (b) of this Section shall be deposited in the special fund of the county treasury provided by Section 11, Article 42.13, of this code to be used for the same purposes for which state aid may be used under that section. The probation department has a maximum of 121 days after the four-year expiration date to transfer the funds to the comptroller's office. Failure to comply with the 121-day deadline will result in a five percent collection fee penalty calculated from the total deposit and all interest attributable to the unclaimed funds.]~~

~~[(d) If the victim of the offense claims the payment during the four-year period in which the payment is held in the interest-bearing account, the probation department shall pay the victim the amount of the original payment, less any interest earned while holding the payment. After the payment has been transferred to the comptroller, the probation department has no liability in regard to the payment, and any claim for the payment must be made to the comptroller. If the victim makes a claim to the comptroller, the comptroller shall pay the victim the amount of the original payment, less the collection fee, from the compensation to victims of crime auxiliary fund.]~~

~~[Sec. 16. WORK PROBATION. (a) A court granting probation to a defendant convicted of a felony may require as a condition of probation that the defendant work a specified number of hours under Section 17 of this article or work a specified number of hours in a supervision work program authorized under this section, unless the court determines that the defendant is physically or mentally incapable of participating in the work program or that participating in the work program will work a hardship on the defendant or the defendant's dependents, in which event the court shall note that fact on the order granting probation. The amount of work hours may not be less than 24 hours and may not be more than 1,000 hours. The court may not require the defendant to work more than eight hours during any week. The court shall make a good-faith effort to place the defendant in a type of work for which the defendant's previous job experience makes the defendant most suited.]~~

~~[(b) The director of a probation department may contract with state agencies or political subdivisions of the state, using defendants required to participate in a work program under this section, to perform tasks contracted for by the agency or subdivision. Proceeds from a contract entered into under this subsection shall be used by the probation department to offset expenses incurred by the department in supervising probationers participating in the work program. Any proceeds in excess of the amount needed to offset the expenses, including the purchase of liability insurance and workers' compensation coverage for probationers performing community service work, shall be remitted by the director of the probation~~

department to the Texas Adult Probation Commission. Proceeds received by the commission under this subsection shall be used to offset expenses incurred by the commission in assisting probation departments to establish and administer programs under this section. Any proceeds in excess of the amount needed to offset the expenses shall be remitted by the commission to the comptroller of public accounts, to be deposited in the general revenue fund.

~~[(e) A director of an adult probation department may contract for work probation programs with nonprofit organizations that serve the public good by providing assistance to the poor, assisting the elderly, or performing other projects that benefit the community. Under the contract, defendants required under this section to participate in a work program as a condition of probation shall perform tasks assigned by the nonprofit organization. The nonprofit organization in turn must enter into contracts with state agencies, political subdivisions, or other nonprofit organizations under which the nonprofit organization furnishes supervised persons to participate in work projects for the public good.~~

~~[(d) A director of an adult probation department, an employee of a department, an officer of a state agency or political subdivision, an organization acting in furtherance of a court's work program order, a director of the organization, or an authorized volunteer working for or utilized by the organization is not liable for damages arising from an act or failure to act by the director, officer, employee, or volunteer in connection with a work program described by this section if the act or failure to act:~~

~~(1) was performed in an official capacity or in furtherance of a court's work program order; and~~

~~(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.~~

~~[(e) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an adult probation department, a director, officer, or employee of a department, a state agency or political subdivision, an officer or employee of a state agency or political subdivision, an organization acting in furtherance of a court's work program order, a director of the organization, or an authorized volunteer working for or utilized by the organization if the act or failure to act is in connection with a work program.~~

~~[(f) This section may not be used by a court in a manner that results in a loss of jobs by employees of the state or any political subdivision of the state.~~

~~[(g) State agencies and political subdivisions of the state entering into contracts under this section may require liability and workers' compensation coverage to the maximum of their liability limits as a condition for entry into the contract and may also require that the contracting unit of government and its agents and employees be coinsured under the policies.~~

~~[(h) Notwithstanding the provisions of Subsection (a) of this section, a court may order a defendant who is not employed to perform up to 32 hours of work probation under this section and may direct the defendant to use the remaining hours of the week to seek employment.]~~

Sec. 16 [17]. COMMUNITY SERVICE. (a) A judge shall [If the court places a defendant on probation, the court may] require[, as a condition of community supervision (the probation), that the defendant work a specified number of hours at a community service project or projects for an organization or organizations approved by the judge and designated by the department, unless the judge determines and notes on the order placing the defendant on community supervision that:

(1) the defendant is physically or mentally incapable of participating in the project;

(2) participating in the project will work a hardship on the defendant or the defendant's dependents;

(3) the defendant is to be confined in a substance abuse punishment facility as a condition of community supervision; or

(4) there is other good cause shown [named in the court's order, and may also require that the defendant submit to testing for controlled substances].

(b) The amount of community service work ordered by the judge [court]:

(1) may not exceed 1,000 hours and may not be less than 320 hours for an offense classified as a first degree felony;

(2) may not exceed 800 hours and may not be less than 240 hours for an offense classified as a second degree felony;

(3) may not exceed 600 hours and may not be less than 160 hours for an offense classified as a third degree felony;

(4) may not exceed 400 hours and may not be less than 120 hours for an offense classified as a state jail felony;

(5) may not exceed 200 hours and may not be less than 80 hours for an offense classified as a Class A misdemeanor or for any other misdemeanor for which the maximum permissible confinement [imprisonment], if any, exceeds six months or the maximum permissible fine, if any, exceeds \$4,000 [\$1,000]; and

(6) [(5)] may not exceed 100 hours and may not be less than 24 hours for an offense classified as a Class B misdemeanor or for any other misdemeanor for which the maximum permissible confinement [imprisonment], if any, does not exceed six months and the maximum permissible fine, if any, does not exceed \$4,000 [\$1,000].

(c) If the judge modifies the defendant's terms of community supervision to include confinement in a state jail felony facility, the judge shall order the defendant to continue to work towards fulfillment of his work requirement during his period of confinement.

(d) A defendant required to perform community service under this section is not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes.

~~[(e) A director of a community supervision and corrections department, an employee of a department, or an officer of a state agency or political subdivision is not liable for damages arising from an act or failure to act by the director, employee, or officer in connection with a community restitution service program described by this section if the act or failure to act:~~

~~[(1) was performed in an official capacity; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.~~

~~[(d) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of a community supervision and corrections department, a director, officer, or employee of a department, a state agency or political subdivision, or an officer or employee of a state agency or political subdivision if the act or failure to act is in connection with a community service program.~~

~~[(e) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Sec. 17. **CHANGE OF RESIDENCE; LEAVING THE STATE.** (a) If, for good and sufficient reasons, a defendant desires to change his residence within the state, the change may be effected by application to the supervising supervision officer, which change shall be subject to the judge's consent and subject to such regulations as the judge may require in the absence of an officer in the locality to which the defendant is transferred.

(b) Any defendant who removes himself from the state without permission of the judge having jurisdiction of the case shall be considered a fugitive from justice and shall be subject to extradition as provided by law. [18. **RESTITUTION CENTERS.** (a) If a judge places a defendant on probation under any provision of this article as an alternative to imprisonment, the judge may require as a condition of probation that the defendant serve a term of not less than three months or more than 12 months in a restitution center if:

~~[(1) the district is served by a restitution center or contracts with a department that agrees to provide spaces in its restitution center;~~

~~[(2) the defendant is not sentenced for a felony offense under Title 5, Penal Code; and~~

~~[(3) the trier of facts determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense.~~

~~[(b) If a jury recommends that an eligible defendant serve an alternate term in a restitution center, the judge shall follow the jury's recommendation.~~

~~[(c) A probationer granted probation under this section may not earn good conduct credit for time spent in a restitution center or apply time spent in the center toward completion of a prison sentence if the probation is revoked.~~

~~[(d) As directed by the judge but at least once during every three months after the date that a probationer is in a restitution center, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the probationer. If the evaluation indicates that the probationer has made significant progress toward compliance with court-ordered conditions of probation and payment of restitution, the court may release the probationer from the restitution center. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.~~

~~[(e) No later than nine months after the date on which a defendant is granted probation under this section, the restitution center director shall file with the chief adult probation officer or the probation department director a copy of an evaluation made by the director of the probationer's behavior and attitude at the center. The officer or director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted probation to the defendant. If the report indicates that the probationer has made significant progress toward court-ordered conditions of probation and payment of restitution, the court may modify its sentence and release the probationer in the same manner as provided by Subsection (d) of this section. If the report indicates that the probationer would benefit from continued participation in the restitution center program, the court may order the probationer to remain at the restitution center for a period determined by the court. If the report indicates that the probationer has not made significant progress toward rehabilitation, the court may revoke probation and order the prisoner to the term of imprisonment specified in the probationer's sentence.~~

~~[(f) If ordered by the judge who placed the defendant on probation, a restitution center director shall attempt to secure employment for the probationer. The director shall also attempt to place a probationer as a worker in a community service project of a type described by Section 17 of this article, either during off-work hours if the probationer is employed or during any time if the probationer is unable to find employment, if so ordered by the judge that placed the defendant on probation.~~

~~[(g) The employer of a probationer participating in a program under this section shall deliver the probationer's salary to the restitution center director. The director shall deposit the salary into a fund to be given to the probationer on his release after deducting:~~

~~[(1) the cost to the center for the probationer's food, housing, and supervision;~~

~~[(2) necessary travel expense to and from work and community service projects and other incidental expenses of the probationer;~~

~~[(3) support of the probationer's dependents; and~~

~~[(4) restitution to the victims of an offense committed by the probationer.~~

~~[(h) If a restitution center director is unable to find employment for a probationer, the director may transfer the probationer to the supervision of the director of another restitution center who agrees to accept the probationer as a participant in the center's program.~~

~~[(i) A restitution center director may grant a short-term furlough to a probationer and may grant an emergency furlough to a probationer for the documented purposes of obtaining medical treatment or diagnosis or attending funerals or visiting critically ill relatives.~~

~~[(j)] A probationer participating in a program under this article shall be confined in the restitution center at all times except for:~~

~~[(1) time spent at work and traveling to and from work;~~

~~[(2) time spent attending and traveling to and from an education or rehabilitation program approved by the restitution center director or the court;~~

~~[(3) time spent attending and traveling to and from a community service project; and~~

~~[(4) time spent on short term or emergency furlough.]~~

Sec. 18 [19]. COMMUNITY CORRECTIONS FACILITIES [OTHER THAN RESTITUTION CENTERS]. (a) In this section, "community corrections facility" means a facility described by Subsection (b)(2) [listed in Subdivision (1)] of Section 1 [5], Article 42.13, of this code, ~~other than a restitution center~~.

(b) If a judge ~~requires~~ [places a defendant on probation under any provision of this article as an alternative to imprisonment, the judge may require] as a condition of *community supervision* [probation] that the defendant serve a term [of not less than one month or more than 24 months] in a community corrections facility, *the term may not be more than 24 months* [designated by the judge if:

~~[(1) the district is served by such a community corrections facility or contracts with a department that agrees to provide spaces in its community corrections facility of that type; and~~

~~[(2) the trier of facts determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense or use a deadly weapon during the commission of or flight from the offense].~~

(c) ~~If a jury recommends that an eligible defendant serve an alternate term in a community corrections facility, the judge shall follow the jury's recommendation.~~

[(d)] A defendant [probationer] granted *community supervision* [probation] under this section may not earn good conduct credit for time spent in a community corrections facility or apply time spent in the facility toward completion of a prison sentence if the *community supervision* [probation] is revoked.

(d) [(e)] As directed by the judge, the corrections facility director shall file with the *community supervision and corrections* [chief adult probation officer or the probation] department director a copy of an evaluation made by the director of the defendant's [probationer's] behavior and attitude at the facility. The [officer or] director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted *community supervision* [probation] to the defendant [probationer]. If the evaluation indicates that the defendant [probationer] has made significant progress toward compliance with court-ordered conditions of *community supervision* [probation], the court may release the defendant [probationer] from the community corrections facility. The defendant [probationer] shall serve the remainder of his *community supervision* [probation] under any terms and conditions the court imposes under this article.

(e) [(f)] No later than 18 months after the date on which a defendant is granted *community supervision* [probation] under this section, the community corrections facility director shall file with the *community supervision and corrections* [chief adult probation officer or the probation] department director a copy of an evaluation made by the director of the defendant's [probationer's] behavior and attitude at the center. The [officer or] director shall examine the evaluation, make written comments on the evaluation that he considers relevant, and file the evaluation and comments with the judge who granted *community supervision* [probation] to the defendant. If the report indicates that the defendant [probationer] has made significant progress toward court-ordered conditions of *community supervision* [probation], the court shall modify its sentence and release the defendant [probationer] in the same manner as provided by Subsection (e) of this section. If the report indicates that the defendant [probationer] would benefit from continued participation in the community corrections facility program, the court may order the defendant [probationer] to remain at the community corrections facility for a period determined by the court. If the report indicates that the defendant [probationer] has not made significant progress toward rehabilitation, the

court may revoke *community supervision* [probation] and order the *defendant* [prisoner] to the term of *confinement* [imprisonment] specified in the *defendant's* [probationer's] sentence.

(f) [(g)] If ordered by the judge who placed the defendant on *community supervision* [probation], a community corrections facility director shall attempt to place a *defendant* [probationer] as a worker in a community-service project of a type described by Section 16 [17] of this article.

(g) [(h)] ~~A community corrections facility director has the same authority as a restitution center director has under Section 18(i) of this article.~~

[(h)] A *defendant* [probationer] participating in a program under this article shall be confined in the community corrections facility at all times except for:

- (1) time spent attending and traveling to and from an education or rehabilitation program as ordered by the court;
- (2) time spent attending and traveling to and from a community-service project; [and]
- (3) time spent away from the facility for purposes described by [Section 18(i) of] this section; and
- (4) time spent traveling to and from work, if applicable [article].

(h) A judge that requires as a condition of community supervision that the defendant serve a term in a community corrections facility may not impose a subsequent term in a community corrections facility or jail during the same supervision period that, when added to the terms previously imposed, exceeds 24 months.

(i) If a defendant participating in a program under this section is not required by the judge to deliver the defendant's salary to the restitution center director, the employer of the defendant shall deliver the salary to the director. The director shall deposit the salary into a fund to be given to the defendant on release after deducting:

- (1) the cost to the center for the defendant's food, housing, and supervision;
- (2) necessary travel expense to and from work and community-service projects and other incidental expenses of the defendant;
- (3) support of the defendant's dependents; and
- (4) restitution to the victims of an offense committed by the defendant.

~~[Sec. 20. INTENSIVE OR MAXIMUM PROBATION. If a judge determines that a defendant whom the judge would otherwise sentence to the institutional division of the Texas Department of Criminal Justice would benefit from intensive or maximum probation, the judge shall suspend imposition of the sentence and place the defendant on intensive or maximum probation.]~~

~~[Sec. 21. ELECTRONIC MONITORING. (a) If a judge sentences a defendant to a term of confinement in the county jail or imprisonment in the institutional division of the Texas Department of Criminal Justice, the defendant is eligible for probation, and the district is served by a district probation office that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice, the judge may suspend imposition of the sentence of imprisonment or confinement and require as a condition of probation that the defendant submit to electronic monitoring. The judge may also require the defendant to submit to testing for controlled substances.]~~

~~[(b) The court may, on a determination that the probationer has made significant progress toward compliance with court-ordered conditions of probation, release the probationer from the electronic monitoring program. The probationer shall serve the remainder of his probation under any terms and conditions the court imposes under this article.]~~

~~[(c) If at any time after a probationer is placed on probation under this section the court determines the probationer has violated a condition of probation under this section or any other section of this article, the court may revoke probation and order the probationer to the term of imprisonment or confinement specified in the probationer's sentence.]~~

~~[(d) A probationer serving on electronic monitoring as a court-ordered condition of probation commits an offense if he intentionally or recklessly damages or destroys any of the electronic monitoring devices. An offense under this subsection is a Class B misdemeanor.]~~

Sec. 19 [22]. FEES. (a) Except as otherwise provided by this subsection, a *judge [court]* granting *community supervision [probation]* shall fix a fee of not less than \$25 and not more than \$40 per month to be paid to the court by the *defendant [probationer]* during the *community supervision [probationary]* period. The *judge [court]* may make payment of the fee a condition of granting or continuing the *community supervision [probation]*. The *judge [court]* may waive or reduce the fee or suspend a monthly payment of the fee if the *judge [it]* determines that payment of the fee would cause the *defendant [probationer]* a significant financial hardship.

(b) The *judge [court]* shall deposit the fees received under Subsection (a) of this section in the special fund of the county treasury, to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

(c) A *judge [court]* receiving a *defendant [probationer]* for supervision as authorized by Article 42.11 of this code may impose on the *defendant [probationer]* any term of *community supervision [probation]* authorized by this article and may require the *defendant [probationer]* to pay the fee authorized by Subsection (a) of this section. Fees received under this section shall be deposited in the same manner as required by Subsection (b) of this section.

(d) For the purpose of determining when fees due on conviction are to be paid to any officer or officers, the placing of the defendant on *community supervision [probation]* shall be considered a final disposition of the case, without the necessity of waiting for the termination of the period of *community supervision [probation or suspension of sentence]*.

Sec. 20 [23]. REDUCTION OR TERMINATION OF COMMUNITY SUPERVISION [PROBATION]. (a) At any time, after the defendant has satisfactorily completed one-third of the original *community supervision [probationary]* period or two years of *community supervision [probation]*, whichever is less [the lesser], the period of *community supervision [probation]* may be reduced or terminated by the *judge [court]*. Upon the satisfactory fulfillment of the conditions of *community supervision [probation]*, and the expiration of the period of *community supervision [probation]*, the *judge [court]*, by order duly entered, shall amend or modify the original sentence imposed, if necessary, to conform to the *community supervision [probation]* period and shall discharge the defendant. ~~If [In case the defendant has been convicted or has entered a plea of guilty or a plea of nolo contendere to an offense other than an offense under Subdivision (2), Subsection (a), Section 19.05, Penal Code, or an offense under Article 67011-1, Revised Statutes, and] the judge discharges the [court has discharged the] defendant under this section, the judge [hereunder, such court] may set aside the verdict or permit the defendant to withdraw his plea, and shall dismiss the accusation, complaint, information or indictment against the [such] defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he has been convicted or to which he has pleaded guilty, except that:~~

(1) proof of the ~~his said~~ conviction or plea of guilty shall be made known to the *judge [court]* should the defendant again be convicted of any criminal offense; and

(2) if the defendant is an applicant for a license or is a licensee under Chapter 42, Human Resources Code, the Texas Department of Human Services may consider the fact that the defendant previously has received *community supervision [probation]* under this article [section] in issuing, renewing, denying, or revoking a license under that chapter.

(b) This section does not apply to a defendant convicted of an offense under Sections 49.04–49.08, Penal Code, or a defendant convicted of an offense punishable as a state jail felony.

Sec. 21 [24]. VIOLATION OF COMMUNITY SUPERVISION [PROBATION]: DETENTION AND HEARING. (a) At any time during the period of *community supervision [probation]* the *judge [court]* may issue a warrant for violation of any of the conditions of the *community supervision [probation]* and cause a defendant convicted under Section 43.02, Penal Code, or under Chapter 481, Health and Safety Code, or Sections 485.031 through 485.035, Health and Safety Code, or placed on deferred adjudication after being charged with one of those offenses, to be subject to the control measures of Section 81.083, Health and Safety Code, and to the court-ordered-management provisions of Subchapter G, Chapter 81, Health and Safety Code.

(b) At any time during the period of *community supervision* [~~probation~~] the *judge* [~~court~~] may issue a warrant for violation of any of the conditions of the *community supervision* [~~probation~~] and cause the defendant to be arrested. Any *supervision* [~~probation~~] officer, police officer or other officer with power of arrest may arrest such defendant with or without a warrant upon the order of the judge [~~of such court~~] to be noted on the docket of the court. A *defendant* [~~probationer~~] so arrested may be detained in the county jail or other appropriate place of *confinement* [~~detention~~] until he can be taken before the *judge* [~~court~~]. Such officer shall forthwith report such arrest and detention to such *judge* [~~court~~]. If the defendant has not been released on bail, on motion by the defendant the *judge* [~~court~~] shall cause the defendant to be brought before *the judge* [~~it~~] for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, extend, modify, or revoke the *community supervision* [~~probation~~]. A *judge* [~~court~~] may revoke the *community supervision* [~~probation~~] of a defendant who is *imprisoned* [~~confined~~] in a penal [~~or correctional~~] institution without a hearing if the defendant in writing before a court of record in the jurisdiction where *imprisoned* [~~confined~~] waives his right to a hearing and to counsel, affirms that he has nothing to say as to why sentence should not be pronounced against him, and requests the *judge* [~~court~~] to revoke *community supervision* [~~probation~~] and to pronounce sentence. In a felony case, the state may amend the motion to revoke *community supervision* [~~probation~~] any time up to seven days before the date of the revocation hearing, after which time the motion may not be amended except for good cause shown, and in no event may the state amend the motion after the commencement of taking evidence at the hearing. The *judge* [~~court~~] may continue the hearing for good cause shown by either the defendant or the state.

(c) [(b)] In a *community supervision* [~~probation~~] revocation hearing at which it is alleged only that the *defendant* [~~probationer~~] violated the conditions of *community supervision* [~~probation~~] by failing to pay compensation paid to appointed counsel, *community supervision* [~~probation~~] fees, court costs, restitution, or reparations, the inability of the *defendant* [~~probationer~~] to pay as ordered by the *judge* [~~court~~] is an affirmative defense to revocation, which the *defendant* [~~probationer~~] must prove by a preponderance of evidence.

(d) [(c)] A defendant has a right to counsel at a hearing under this section.

Sec. 22 [25]. CONTINUATION OR MODIFICATION. (a) If after a hearing under Section 21 [24] of this article a *judge* [~~court~~] continues or modifies *community supervision* [~~a felony probation~~] after determining that the *defendant* [~~probationer~~] violated a condition of *community supervision* [~~probation~~], the *judge* [~~court~~] may impose *any other conditions the judge determines are appropriate, including* [~~one or more of the following sanctions on the probationer~~]:

(1) a requirement that the *defendant* [~~probationer~~] perform [~~work probation or~~] community service for a number of hours specified by the court under Section 16 [~~or 17~~] of this article, or an increase in the number of hours that the *defendant* [~~probationer~~] has previously been required to perform under those sections *in an amount not to exceed double the number of hours permitted by Section 16*;

(2) an increase in the period of *community supervision* [~~probation~~], in the manner described by Subsection (b) of this section;

(3) an increase in the *defendant's* [~~probationer's~~] fine, in the manner described by Subsection (d) [(e)] of this section; or

(4) *the placement of the defendant in a substance abuse felony punishment program operated under Section 493.009, Government Code, if:*

(A) *the defendant is convicted of a felony other than a felony under Section 21.11, 22.011, 22.021, or 25.06, Penal Code; and*

(B) *the judge makes an affirmative finding that:*

(i) *drug or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and*

(ii) *the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b), Government Code. [the placement of the probationer in an intensive or maximum probation program, in the same manner and under the same conditions as if the court had originally placed the probationer in that program;*

~~[(5) the placement of the probationer in an electronic monitoring program under Section 21 of this article;~~

~~[(6) confinement in the county jail for a period not to exceed 30 days, to be served consecutively, or at the discretion of the court, in the manner provided by Article 42.033 or 42.034 of this code;~~

~~[(7) placement in a community corrections facility, in the same manner and under the same conditions as if the court had originally placed the probationer in that program, if the probationer would have been eligible for sentencing to the center on conviction of the offense for which the probationer received probation;~~

~~[(8) confinement in the county jail for a period not to exceed 90 days, to be served consecutively; or~~

~~[(9) confinement in a facility operated by the institutional division of the Texas Department of Criminal Justice for a period of either 60 or 90 days, as specified by the court, if the court enters in the order modifying probation a statement that the court has previously imposed three or more sanctions on the defendant under this section.]~~

(b) If the judge imposes a sanction under Subsection (a)(4) of this section, the judge shall also impose a condition requiring the defendant on successful completion of the program to participate in a drug or alcohol abuse continuum of care program.

(c) The judge may extend a period of community supervision under this section as often as the judge determines is necessary, but in no case may the period of community supervision in a first, second, or third degree felony case exceed 10 years or the period of community supervision in a misdemeanor case exceed three years. A court may extend a period of community supervision under this section at any time during the period of supervision or, if a motion for revocation of community supervision is filed before the period of supervision ends, before the first anniversary of the date on which the period of supervision expires. [A court may impose a sanction on a probationer described by Subsection (a)(2) of this section by extending the period of probation for a period not to exceed one year. The total period of probation, including any extensions under this subsection, may not exceed 10 years.]

(d) [(e)] A judge [court] may impose a sanction on a defendant [probationer] described by Subsection (a)(3) of this section by increasing the fine imposed on the defendant. The original fine imposed on the defendant [probationer] and an increase in the fine imposed under this subsection may not exceed the maximum fine for the offense for which the defendant [probationer] was sentenced. The judge [court] shall deposit money received from an increase in the defendant's [probationer's] fine under this subsection in the special fund of the county treasury to be used for the same purposes for which state aid may be used under Article 42.131 of this code.

~~[(d) If a court continues or modifies a misdemeanor probation after determining that the probationer violated a condition of probation, the court may extend the probationer's period of probation or increase the probationer's fine, in the same manner under Subsections (b) and (c) of this section as if the probationer were a felony probationer, except that the total period of probation, including any extensions imposed under this subsection, may not exceed three years.]~~

Sec. 23 [26]. REVOCATION. (a) If community supervision [probation] is revoked after a hearing under Section 21 [24] of this article, the judge [court] may proceed to dispose of the case as if there had been no community supervision [probation], or if the judge [it] determines that the best interests of society and the defendant [probationer] would be served by a shorter term of confinement [imprisonment], reduce the term of confinement [imprisonment] originally assessed to any term of confinement [imprisonment] not less than the minimum prescribed for the offense of which the defendant [probationer] was convicted. The judge [court] shall enter the amount of restitution or reparation owed by the defendant on the date of revocation in the judgment in the case.

(b) No part of the time that the defendant is on community supervision [probation] shall be considered as any part of the time that he shall be sentenced to serve[, except for time spent by the defendant in actual confinement as a condition of probation under Section 12 or 13 of this article]. The right of the defendant [probationer] to appeal [to the Court of Appeals]

for a review of the ~~[trial and]~~ conviction *and punishment*, as provided by law, shall be accorded the *defendant* ~~[probationer]~~ at the time he is placed on *community supervision* ~~[probation]~~. When he is notified that his *community supervision* ~~[probation]~~ is revoked for violation of the conditions of *community supervision* ~~[probation]~~ and he is called on to serve a sentence in a jail or in the *institutional division of the Texas Department of Criminal Justice* ~~[an institution operated by the Department of Corrections]~~, he may appeal the revocation.

Sec. 24. PILOT SUPERVISION CONTRACTS. The Texas Board of Criminal Justice may contract with the Commissioners Court of Travis County or the Travis County community supervision and corrections department for the confinement of felons under community supervision. The commissioners court or the community supervision and corrections department may not enter into a contract under this section unless the commissioners court or department first consults with the community justice council serving the county or the department. If the county commissioners or the community supervision and corrections department contracts with the board under this section, the commissioners court or the department may subcontract with a private vendor for the provision of any and all services described in this section. This section expires on September 1, 1995.

~~[Sec. 27. CHANGE OF RESIDENCE; LEAVING THE STATE. (a) If, for good and sufficient reasons, a probationer desires to change his residence within the State, such transfer may be effected by application to the supervising probation officer, which transfer shall be subject to the court's consent and subject to such regulations as the court may require in the absence of a probation officer in the locality to which the probationer is transferred.]~~

~~[(b) Any probationer who removes himself from the State of Texas without permission of the court having jurisdiction of the case shall be considered a fugitive from justice and shall be subject to extradition as now provided by law.]~~

~~[Sec. 28. PROGRAM TO ASSESS AND ENHANCE PROBATIONER'S EDUCATIONAL AND VOCATIONAL SKILLS. (a) A community supervision and corrections department, with the assistance of public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities, may establish a developmental program for a probationer under the supervision of the department on the basis of information developed under Section 11(g) of this article, as added by Chapter 260, Acts of the 71st Legislature, Regular Session, 1989.]~~

~~[(b) The developmental program may provide the probationer with the educational and vocational training necessary to:]~~

~~[(1) meet the average skill level required under Section 11(g) of this article, as added by Chapter 260, Acts of the 71st Legislature, Regular Session, 1989; and~~

~~[(2) maintain employment while under the supervision of the department, to lessen the likelihood that the probationer will commit additional offenses]~~

~~[(c) To decrease expenditures by community supervision and corrections departments for the educational and vocational skills assessment and enhancement program established under this section, the Texas Department of Commerce shall provide information to community supervision and corrections departments, public school districts, community and public junior colleges, public and private institutions of higher education, and other appropriate public and private entities for obtaining financial assistance through the Texas Job Training Partnership Act (Article 4413(52), Vernon's Texas Civil Statutes) and other applicable programs of public or private entities.]~~

SECTION 4.02. (a) Except as provided by Subsection (b) of this section, the change in law made by this article to Article 42.12, Code of Criminal Procedure, applies only to a defendant charged with or convicted of an offense committed on or after the effective date of this article. For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date. A defendant charged with or convicted of an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) A court may require the confinement and treatment of a defendant as a condition of probation under Section 14, Article 42.12, Code of Criminal Procedure, as added by this

article, granted for an offense whether the offense is committed before, on, or after the effective date of this Act.

SECTION 4.021. Section 534.053(c), Health and Safety Code, is amended to read as follows:

(c) To the extent that resources are available, the department shall:

(1) ensure that the services listed in this section are available for children, including adolescents, as well as adults, in each service area; [and]

(2) emphasize early intervention services for children, including adolescents, who meet the department's definition of being at high risk of developing severe emotional disturbances or severe mental illnesses; and

(3) ensure that services listed in this section are available for defendants required to submit to mental health treatment under Article 17.032 or Section 5(a) or 11(d), Article 42.12, Code of Criminal Procedure.

SECTION 4.03. From the effective date of this article until September 1, 1994, a reference in Article 42.12, Code of Criminal Procedure, as amended by this Act, to an offense under Chapter 49, Penal Code, shall be construed as a reference to the offense and the punishment provisions for the offense as they existed before the effective date of Article 1 of this Act.

SECTION 4.04. (a) On and after September 1, 1993, a reference in the law to "probation" or "deferred adjudication" means "community supervision," as that term is defined in Section 2, Article 42.12, Code of Criminal Procedure, as amended by Section 4.01 of this article. A defendant who is placed on probation or who receives deferred adjudication before September 1, 1993, is considered on and after September 1, 1993, to have previously been placed on community supervision.

(b) The legislature declares that among its purposes in amending Article 42.12, Code of Criminal Procedure, in Section 4.01 of this article, is the purpose of authorizing a judge to place a defendant for whom the judge defers criminal proceedings without an adjudication of guilt under the same continuum of programs and sanctions that the judge could place a defendant under if the judge probated the defendant's sentence and suspended the imposition of the sentence. It is not the intent of the legislature to eliminate or alter substantive or procedural distinctions between probated and suspended sentences and deferred adjudications, other than those distinctions related to placement of defendants under a continuum of sanctions and programs.

SECTION 4.05. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 1993.

(b) Section 15, Article 42.12, Code of Criminal Procedure, as added by this article, takes effect September 1, 1994.

ARTICLE 5

SECTION 5.01. Section 3(d), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(d) When the judge assesses the punishment, he may order an investigative report as contemplated in Section 9 [4] of Article 42.12 of this code and after considering the report, and after the hearing of the evidence hereinabove provided for, he shall forthwith announce his decision in open court as to the punishment to be assessed.

SECTION 5.02. Section 4, Article 37.07, Code of Criminal Procedure, is amended to read as follows:

Sec. 4. (a) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or if the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, unless the defendant has been convicted of a capital felony the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served equals *one-half* [~~one-fourth~~] of the sentence imposed or 30 [15] years, whichever is less, without consideration of any good conduct time he may earn. If the defendant is sentenced to a term of less than *four* [~~six~~] years, he must serve at least two years before he is eligible for parole. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(b) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the first degree, if a prior conviction has been alleged for enhancement of punishment as provided by Section 12.42(b), (c), or (d), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is longer than 60 years, unless the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed or 15 years, whichever is less. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(c) In the penalty phase of the trial of a felony case in which the punishment is to be assessed by the jury rather than the court, if the offense is punishable as a felony of the second or third degree, if a prior conviction has been alleged for enhancement as provided by Section 12.42(a), Penal Code, or if the offense is a felony not designated as a capital felony or a felony of the first, second, or third degree and the maximum term of imprisonment that may be imposed for the offense is 60 years or less, unless the offense of which the jury has found the defendant guilty is listed in Section 3g(a)(1), Article 42.12, of this code or the

judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, of this code, the court shall charge the jury in writing as follows:

"Under the law applicable in this case, the defendant, if sentenced to a term of imprisonment, may earn time off the period of incarceration imposed through the award of good conduct time. Prison authorities may award good conduct time to a prisoner who exhibits good behavior, diligence in carrying out prison work assignments, and attempts at rehabilitation. If a prisoner engages in misconduct, prison authorities may also take away all or part of any good conduct time earned by the prisoner.

"It is also possible that the length of time for which the defendant will be imprisoned might be reduced by the award of parole.

"Under the law applicable in this case, if the defendant is sentenced to a term of imprisonment, he will not become eligible for parole until the actual time served plus any good conduct time earned equals one-fourth of the sentence imposed. Eligibility for parole does not guarantee that parole will be granted.

"It cannot accurately be predicted how the parole law and good conduct time might be applied to this defendant if he is sentenced to a term of imprisonment, because the application of these laws will depend on decisions made by prison and parole authorities.

"You may consider the existence of the parole law and good conduct time. However, you are not to consider the extent to which good conduct time may be awarded to or forfeited by this particular defendant. You are not to consider the manner in which the parole law may be applied to this particular defendant."

(d) This section does not permit the introduction of evidence on the operation of parole and good conduct time laws.

SECTION 5.03. Chapter 42, Code of Criminal Procedure, is amended by amending Articles 42.01–42.036, 42.08, and 42.09 and adding Articles 42.023 and 42.20 to read as follows:

Art. 42.01. JUDGMENT

Sec. 1. A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant. The sentence served shall be based on the information contained in the judgment. The judgment should reflect:

1. The title and number of the case;
2. That the case was called and the parties appeared, naming the attorney for the state, the defendant, and the attorney for the defendant, or, where a defendant is not represented by counsel, that the defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel;
3. The plea or pleas of the defendant to the offense charged;
4. Whether the case was tried before a jury or a jury was waived;
5. The submission of the evidence, if any;
6. In cases tried before a jury that the jury was charged by the court;
7. The verdict or verdicts of the jury or the finding or findings of the court;
8. In the event of a conviction that the defendant is adjudged guilty of the offense as found by the verdict of the jury or the finding of the court, and that the defendant be punished in accordance with the jury's verdict or the court's finding as to the proper punishment;
9. In the event of conviction where death or any ~~[nonprobated]~~ punishment is assessed that the defendant be sentenced to death, a term of *confinement or community supervision* ~~[imprisonment]~~, or to pay a fine, as the case may be;
10. In the event of conviction where ~~[any probated punishment is assessed that]~~ the imposition of sentence is suspended and the defendant is placed on *community supervision* ~~[probation]~~, setting forth the punishment assessed, the length of *community supervision* ~~[probation]~~, and the ~~[probationary terms and]~~ *conditions of community supervision*;
11. In the event of acquittal that the defendant be discharged;
12. The county and court in which the case was tried and, if there was a change of venue in the case, the name of the county in which the prosecution was originated;

13. The offense or offenses for which the defendant was convicted;
14. The date of the offense or offenses and degree of offense for which the defendant was convicted;
15. The term of sentence;
16. The date judgment is entered;
17. The date sentence is imposed;
18. The date sentence is to commence and any credit for time served;
19. The terms of any order entered pursuant to Article 42.08 of this code that the defendant's sentence is to run cumulatively or concurrently with another sentence or sentences;
20. The terms of any plea bargain;
21. Affirmative findings entered pursuant to Subdivision (2) of Subsection (a) of Section 3g of Article 42.12 of this code;
22. The terms of any fee payment ordered under Articles 37.072 and 42.151 of this code;
23. The defendant's thumbprint taken in accordance with Article 38.33 of this code;
24. In the event that the judge orders the defendant to repay a reward or part of a reward under Articles 37.073 and 42.152 of this code, a statement of the amount of the payment or payments required to be made; ~~and~~
25. In the event that the court orders restitution to be paid to the victim ~~[of a felony]~~, a statement of the amount of restitution ordered and:
 - (A) the name of the victim and the permanent mailing address of the victim at the time of the judgment; or
 - (B) if the court determines that the inclusion of the victim's name and address in the judgment is not in the best interest of the victim, the name and address of a person or agency that will accept and forward restitution payments to the victim; *and*
26. *In the event that a presentence investigation is required by Section 9(a), (b), (h), or (i), Article 42.12 of this code, a statement that the presentence investigation was done according to the applicable provision.*

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this *article* ~~[Article]~~ shall apply to both felony and misdemeanor cases.

Sec. 4. The Office of Court Administration of the Texas Judicial System shall promulgate a standardized felony judgment form that conforms to the requirements of Section 1 of this article. ~~[A copy of the promulgated form shall be mailed to all district courts hearing criminal cases on or before October 1, 1985.]~~

~~[Art. 42.011. RISK ASSESSMENT INSTRUMENTS. (a) Not later than the 30th day after the date on which a court pronounces sentence in a felony case, the court shall submit a risk assessment instrument to the community justice assistance division of the Texas Department of Criminal Justice on a form provided by the division. If the court does not suspend a sentence of confinement in the case or sentence a defendant under Section 12.34(a)(2), Penal Code, the court shall attach a statement of its reasons to the form.~~

~~[(b) The division shall develop and distribute forms for use under Subsection (a) of this article not later than September 1, 1990.]~~

Art. 42.02. SENTENCE. The sentence is that part of the judgment, or order revoking a *suspension of the imposition of a* ~~[probated]~~ sentence, that orders that the punishment be carried into execution in the manner prescribed by law.

Art. 42.023. JUDGE MAY CONSIDER ALTERNATIVE SENTENCING. *Before pronouncing sentence on a defendant convicted of a criminal offense, the judge may consider whether the defendant should be committed for care and treatment under Section 462.081, Health and Safety Code.*

Art. 42.03. PRONOUNCING SENTENCE; TIME; CREDIT FOR TIME SPENT IN JAIL BETWEEN ARREST AND SENTENCE OR PENDING APPEAL

Sec. 1. (a) Except as provided in Article 42.14, sentence shall be pronounced in the defendant's presence.

(b) The court shall permit a victim, close relative of a deceased victim, or guardian of a victim, as defined by Article 56.01 of this code, to appear in person to present to the court a statement of the person's views about the offense, the defendant, and the effect of the offense on the victim. *The court reporter may not transcribe the statement.* The statement must be made:

(1) after punishment has been assessed and the court has determined whether or not to grant *community supervision* [probation] in the case;

(2) after the court has announced the terms and conditions of the sentence; and

(3) after sentence is pronounced [~~and shall not be transcribed by the court reporter~~].

Sec. 2. (a) In all criminal cases the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence [~~or period of confinement served as a condition of probation~~] for the time that the defendant has spent in jail in said cause, *other than confinement served as a condition of community supervision*, from the time of his arrest and confinement until his sentence by the trial court.

(b) In all [~~felony probation~~] revocations of a suspension of the imposition of a sentence the judge shall enter the restitution or reparation due and owing on the date of the revocation [~~of probation~~].

Sec. 3. If a defendant appeals his conviction, is not released on bail, and is retained in a [~~local~~] jail as provided in Section 7 [5], Article 42.09, pending his appeal, the judge of the court in which the defendant was convicted shall give the defendant credit on his sentence for the time that the defendant has spent in jail pending disposition of his appeal. The court shall endorse on both the commitment and the mandate from the appellate court all credit given the defendant under this section, and the *institutional division of the Texas Department of Criminal Justice* [~~Corrections~~] shall grant the credit in computing the defendant's eligibility for parole and discharge.

Sec. 4. When a defendant who has been sentenced to imprisonment in the *institutional division of the Texas Department of Criminal Justice* [~~Corrections~~] has spent time in jail pending trial and sentence or pending appeal, the judge of the sentencing court shall direct the sheriff to attach to the commitment papers a statement assessing the defendant's conduct while in jail.

~~[Sec. 7. (a) If jail time is awarded to a person sentenced for an offense under Section 25.05, Penal Code, or if the person is required to serve a period of confinement as a condition of probation, the judge, at the time of the pronouncement of the sentence or at any time while the person is serving the sentence or period of confinement, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence or period of confinement under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence or period of confinement.~~

~~[(b) The court shall require as a condition to permitting the defendant to serve the jail time assessed or period of confinement imposed under house arrest a requirement that the defendant perform community service work specified by the court for a specified number of hours.~~

~~[(c) The court may require the defendant to pay any reasonable cost to the county incurred by the county because of the defendant's participation in the house arrest program, including the cost to the county for the defendant's participation in community service work and the cost of electronic monitoring.~~

~~[(d) The sentencing and confinement alternatives provided by this section are in addition to any other sentencing and confinement alternatives provided by law.~~

~~[Sec. 7A. A court in a county served by a district probation office that has an electronic monitoring program approved by the community justice assistance division of the Texas~~

~~Department of Criminal Justice may require a defendant to serve all or part of a sentence of confinement in county jail or period of confinement served as a condition of probation by submitting to electronic monitoring rather than being confined in the county jail.~~

~~[Sec. 8. (a) A court may require a defendant to serve all or part of a sentence of confinement in county jail or period of confinement served as a condition of probation by performing community service rather than by being confined in county jail.~~

~~[(b) In its order requiring a defendant to participate in community service work, the court must specify:~~

~~(1) the number of hours the defendant is required to work;~~

~~(2) the entity or organization for which the defendant is required to work;~~

~~(3) the project on which the defendant is required to work; and~~

~~(4) whether the district probation department or a court related services office will perform the administrative duties required by the placement of the defendant in the community service program.~~

~~[(e) The court may order the defendant to perform community service work under this section only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court related services office.~~

~~[(d) A court may not order a defendant to perform more than 16 hours per week of community service under this section unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.~~

~~[(e) A defendant is considered to have served one day in jail for each eight hours of community service performed under this section.~~

~~[(f) Notwithstanding the provisions of Subsection (d) of this section, a court may order a defendant who is not employed to perform up to 32 hours of community service under this section and may direct the defendant to use the remaining hours of the week to seek employment.~~

~~[(f) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 42.031. WORK RELEASE PROGRAM

Sec. 1. (a) The sheriff of each county may attempt to secure employment for each *defendant* [prisoner] sentenced to the county jail work release program under Article 42.034 of this code *and each defendant confined in the county jail awaiting transfer to the institutional division of the Texas Department of Criminal Justice* [or permitted under that article to participate in the program as an alternative to serving a period of confinement as a condition of probation].

(b) The employer of a *defendant* [prisoner] participating in a program under this article shall pay the *defendant's* [prisoner's] salary to the sheriff. The sheriff shall deposit the salary into a special fund to be given to the *defendant* [prisoner] on his release after deducting:

(1) the cost to the county[, as determined by the commissioners court of the county,] for the *defendant's* confinement [prisoner's incarceration] during the pay period based on the average daily cost of confining defendants in the county jail, as determined by the commissioners court of the county;

(2) support of the *defendant's* [prisoner's] dependents; and

(3) restitution to the victims of an offense committed by the *defendant* [prisoner].

(c) At the time of sentencing or at a later date, the court sentencing a *defendant* [prisoner] may direct the sheriff not to deduct the cost described under Subdivision (1) of Subsection (b) of this section or to deduct only a specified portion of the cost if the court determines that the full deduction would cause a significant financial hardship to the *defendant's* [prisoner's] dependents.

(d) If the sheriff does not find employment for a *defendant* [prisoner] who would otherwise be sentenced to imprisonment [or confined as a condition of probation] in the institutional division, the sheriff shall:

(1) transfer the *defendant* [prisoner] to the sheriff of a county who agrees to accept the *defendant* [prisoner] as a participant in the county jail work release program; or

(2) retain the *defendant* [prisoner] in the county jail for employment as soon as possible in a jail work release program.

~~[(e) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.]~~

Sec. 2. A *defendant* [prisoner] participating in a program under this article shall be confined in the county jail or in another facility designated by the sheriff at all times except for:

(1) time spent at work and traveling to or from work; and

(2) time spent attending or traveling to or from an education or rehabilitation program approved by the sheriff.

Sec. 3. (a) The sheriff of each county shall classify each felon serving a sentence in the county jail work release program ~~[or participating in that program as an alternative to serving a period of confinement as a condition of probation]~~ for the purpose of awarding good conduct time credit in the same manner as inmates of the *institutional division of the Texas Department of Criminal Justice* [Corrections] are classified under Chapter 498, Government Code, and shall award good conduct time in the same manner as the director of the department does in that *chapter* [article].

~~(b) If the sheriff determines that the defendant is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, the sheriff may remove the defendant from participation in the program pending a hearing before the sentencing court. At the hearing, if the court determines that the sheriff's assessment of the defendant's conduct is correct, the court may terminate the defendant's participation in the program and order the defendant to the term of imprisonment that the defendant would have received had he not entered the program. If the court determines that the sheriff's assessment is incorrect, the court shall order the sheriff to readmit the defendant to the program. A defendant shall receive as credit toward his sentence any time served as a participant in the program [If at a hearing requested by a sheriff the court that sentenced the prisoner to participation in a county jail work release program determines that the prisoner is conducting himself in a manner that is dangerous to inmates in the county jail or to society as a whole, the court shall order the prisoner's participation in the program terminated and order the prisoner to the term or period of confinement or the term of imprisonment that the prisoner would have received had he not entered the program. The prisoner shall receive as credit toward his sentence or period of confinement any time served as a participant in the program].~~

Art. 42.032. GOOD CONDUCT

Sec. 1. To encourage county jail discipline, a distinction may be made to give orderly, industrious, and obedient *defendants* [prisoners] the comforts and privileges they deserve. The reward for good conduct may consist of a relaxation of strict county jail rules and extension of social privileges consistent with proper discipline.

Sec. 2. The sheriff in charge of each county jail may grant commutation of time for good conduct, industry, and obedience. A deduction not to exceed one day for each day of the original sentence actually served may be made for the term or terms of sentences ~~[or periods]~~

~~of confinement served as conditions of probation]~~ if a charge of misconduct has not been sustained against the ~~defendant [prisoner]~~.

Sec. 3. This article applies whether or not the judgment of conviction is a fine or jail sentence or both ~~[or whether the confinement is a condition of probation]~~, but the deduction in time may not exceed one-third of the original sentence as to fines and court costs assessed in the judgment of conviction ~~[or one-third of the period of confinement ordered as a condition of probation]~~.

Sec. 4. A ~~defendant [prisoner]~~ serving two or more cumulative sentences shall be allowed commutation as if the sentences were one sentence~~[-and a probationer serving two or more periods of confinement as conditions of probation in more than one case shall be allowed commutation as if the periods were conditions of one grant of probation]~~.

Sec. 5. Any part or all of the commutation accrued under this article may be forfeited and taken away by the sheriff for a sustained charge of misconduct in violation of any rule known to the ~~defendant [prisoner]~~, including escape or attempt to escape, if the sheriff has complied with discipline proceedings as approved by the Commission on Jail Standards.

Sec. 6. Except for credit earned by a ~~defendant [an inmate]~~ under Article 43.10, no other time allowance or credits in addition to the commutation of time under this article may be deducted from the term or terms of sentences ~~[or periods of confinement served as a condition of probation]~~.

Sec. 7. The sheriff shall keep a conduct record in card or ledger form and a calendar card on each ~~defendant [inmate]~~ showing all forfeitures of commutation time and the reasons for the forfeitures.

Art. 42.033. SENTENCE TO SERVE TIME DURING OFF-WORK HOURS. (a) Where jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony or when a defendant is serving a period of confinement as a condition of *community supervision* ~~[probation]~~, the trial judge, at the time of the pronouncement of sentence or at any time while the defendant is serving the sentence or period of confinement, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve the defendant's sentence or period of confinement *intermittently* during his off-work hours or on weekends. The judge may require bail of the defendant to ensure the faithful performance of the sentence or period of confinement. The judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence or period of confinement.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed or period of confinement *intermittently* ~~[during off-work hours or on weekends]~~ an additional requirement that the defendant make any of the following payments to the court, agencies, or persons, or that the defendant execute a letter and direct it to the defendant's employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money received by the court under this section may be used to pay the following expenses as directed by the court:

- (1) the support of the defendant's dependents, if necessary;
- (2) the defendant's documented personal, business, and travel expenses;
- (3) reimbursement of the general fund of the county for the maintenance of the defendant in jail; and
- (4) installment payments on restitution, fines, and court costs ordered by the court.

(c) The condition imposed under Subsection (b) of this article is not binding on an employer, except that income withheld for child support is governed by Chapter 14, Family Code.

(d) The court may permit the defendant to serve the defendant's sentence or period of confinement *intermittently* ~~[during the defendant's off-work hours or on weekends]~~ in order for the defendant to continue employment if the court imposes confinement for failure to pay a fine or court costs, as punishment for criminal nonsupport under Section 25.05, Penal Code, or for contempt of a court order for periodic payments for the support of a child.

(e) The court may permit the defendant to seek employment or obtain medical, psychological, or substance abuse treatment or counseling or obtain training or needed education under the same terms and conditions that apply to employment under this article.

Art. 42.034. COUNTY JAIL WORK RELEASE PROGRAM. (a) If jail time has been awarded to a person sentenced for a misdemeanor or sentenced to confinement in the county jail for a felony ~~[or when a defendant is serving a period of confinement as a condition of probation]~~, the trial judge at the time of pronouncement of sentence or at any time while the defendant is serving the sentence ~~[or period of confinement]~~, when in the judge's discretion the ends of justice would best be served, may permit the defendant to serve an alternate term for the same period of time in the county jail work release program of the county in which the offense occurred ~~if:~~

~~[(1) the trier of fact determines that the defendant did not cause the serious bodily injury or death of another as a result of the commission of the offense; and~~

~~[(2) the judgment for the offense does not contain an affirmative finding under Section 3g(a)(2), Article 42.12, of this code].~~

(b) A defendant sentenced under this section ~~[or serving a period of confinement]~~ who would otherwise be sentenced to confinement in jail ~~[or required to serve a period of confinement in jail]~~ may earn good conduct credit in the same manner as provided by Article 42.032 of this code ~~[Section 1, Chapter 461, Acts of the 54th Legislature, Regular Session, 1955 (Article 5118a, Vernon's Texas Civil Statutes)]~~, but only while actually confined.

~~[(c) A sheriff or an employee of a sheriff's department is not liable for damages arising from an act or failure to act by the sheriff or employee in connection with a work program operated under this section if the act or failure to act was performed in an official capacity.]~~

Art. 42.035. ELECTRONIC MONITORING; HOUSE ARREST. (a) A court in a county served by a community supervision and corrections department ~~[district probation office]~~ that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice ~~[Adult Probation Commission]~~ may require a defendant to serve all or part of a sentence of confinement in county jail by submitting to electronic monitoring, rather than being confined in the county jail.

(b) A judge, at the time of the pronouncement of a sentence of confinement or at any time while the defendant is serving the sentence, on the judge's own motion or on the written motion of the defendant, may permit the defendant to serve the sentence under house arrest, including electronic monitoring and any other conditions the court chooses to impose, during the person's off-work hours. The judge may require bail of the defendant to ensure the faithful performance of the sentence.

(c) The court may require the defendant to pay to the community supervision and corrections department or the county any reasonable cost incurred because of the defendant's participation in the house arrest program, including the cost of electronic monitoring.

(d) A defendant who submits to electronic monitoring or participates in the house arrest program under ~~[Subsection (a) of]~~ this section discharges a sentence of confinement without deductions, good conduct time credits, or commutations.

Art. 42.036. COMMUNITY SERVICE. (a) A court may require a defendant, other than a defendant convicted of an offense under Sections 49.04–49.08, Penal Code, to serve all or part of a sentence of confinement or period of confinement required as a condition of community supervision ~~[probation]~~ in county jail by performing community service rather than by being confined in county jail unless the sentence of confinement was imposed by the jury in the case.

(b) In its order requiring a defendant to participate in community service work, the court must specify:

(1) the number of hours the defendant is required to work; and

(2) the entity or organization for which the defendant is required to work;

~~[(3) the project on which the defendant is required to work; and~~

~~[(4) whether the district probation department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program].~~

(c) The court may order the defendant to perform community service work under this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under this section to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the *community supervision and corrections* ~~[district probation]~~ department or court-related services office.

(d) The court may require bail of a defendant to ensure the defendant's faithful performance of community service and may attach conditions to the bail as it determines are proper.

(e) A court may not order a defendant *who is employed* to perform more than 16 hours per week of community service under this article ~~[section]~~ unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents. *A court may not order a defendant who is unemployed to perform more than 32 hours per week of community service under this article, but may direct the defendant to use the remaining hours of the week to seek employment.*

(f) A defendant is considered to have served one day in jail for each eight hours of community service performed under this article ~~[section]~~.

~~[(g) An officer or an employee of a governmental entity is not liable for damages arising from an act or failure to act by the officer or employee in connection with a community service program operated under this section if the act or failure to act was performed in an official capacity.~~

~~[(h) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with community service performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 42.08. CUMULATIVE OR CONCURRENT SENTENCE. (a) When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Sections (b) and (c) of this article, in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly; provided, however, that the cumulative total of suspended sentences in felony cases shall not exceed 10 years, and the cumulative total of suspended sentences in misdemeanor cases shall not exceed the maximum period of *confinement* ~~[imprisonment]~~ in jail applicable to the misdemeanor offenses, though in no event more than three years, including extensions of periods of *community supervision* ~~[probation]~~ under Section 22 [24], Article 42.12, of this code, if none of the offenses are offenses under Chapter 49, Penal Code ~~[Article 6701-1, Revised Statutes]~~, or four years, including extensions, if any of the offenses are offenses under Chapter 49, Penal Code ~~[Article 6701-1, Revised Statutes]~~.

(b) If a defendant is sentenced for an offense committed while the defendant was *an inmate* ~~[a prisoner]~~ in the *institutional division of the Texas Department of Criminal Justice* ~~[Corrections]~~ and the defendant has not completed the sentence he was serving at the time of the offense, the judge shall order the sentence for the subsequent offense to commence immediately on completion of the sentence for the original offense.

(c) If a defendant has been convicted in two or more cases and the court suspends the imposition of the sentence in one of the cases, the court may not order a sentence of confinement to commence on the completion of a suspended sentence for an offense.

Art. 42.09. COMMENCEMENT OF SENTENCE; STATUS DURING APPEAL; PEN PACKET [AND DELIVERY TO PLACE OF CONFINEMENT]

Sec. 1. Except as provided in Sections 2 and 3, a defendant shall be delivered to a jail or to the *institutional division of the Texas Department of Criminal Justice* [Corrections] when his sentence [to imprisonment] is pronounced, or his sentence to death is announced, by the court. The defendant's sentence begins to run on the day it is pronounced, but with all credits, if any, allowed by Article 42.03.

Sec. 2. If a defendant appeals his conviction and is released on bail pending disposition of his appeal, when his conviction is affirmed, the clerk of the trial court, on receipt of the mandate from the appellate court, shall issue a commitment against the defendant. The officer executing the commitment shall endorse thereon the date he takes the defendant into custody and the defendant's sentence begins to run from the date endorsed on the commitment. The *institutional division of the Texas Department of Criminal Justice* [Corrections] shall admit the defendant named in the commitment on the basis of the commitment.

Sec. 3. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the *institutional division of the Texas Department of Criminal Justice* [Corrections] and he gives notice of appeal, he shall be transferred to the *institutional division* [Department of Corrections] on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals.

Sec. 4. If a defendant is convicted of a felony and his sentence is a term of ten years or less and he gives notice of appeal, he shall be transferred to the *institutional division of the Texas Department of Criminal Justice* [Corrections] on a commitment pending a mandate from the court of appeals or the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the *institutional division* [Department of Corrections] under this section, the defendant may not thereafter be released on bail pending his appeal.

Sec. 5. If a defendant is transferred to the *institutional division of the Texas Department of Criminal Justice* [Corrections] pending appeal under Section 3 or 4, his sentence shall be computed as if no appeal had been taken if the appeal is affirmed.

Sec. 6. All defendants who have been transferred to the *institutional division of the Texas Department of Criminal Justice* [Corrections] pending the appeal of their convictions under this article [Article] shall be under the control and authority of the *institutional division* [Department of Corrections] for all purposes as if no appeal were pending.

Sec. 7. If a defendant is sentenced to a term of imprisonment [confinement] in the *institutional division of the Texas Department of Criminal Justice* [Corrections] but is not transferred to the *institutional division* [Department of Corrections] under Section 3 or 4 of this article, the court, before the date on which it would lose jurisdiction under Section 6(a) [3e], Article 42.12, of this code, shall send to the department a document containing a statement of the date on which the defendant's sentence was pronounced and credits earned by the defendant under Article [Section] 42.03 of this code as of the date of the statement.

Sec. 8. (a) A county that transfers a defendant to the *institutional division of the Texas Department of Criminal Justice* [Corrections] under this article [Article] shall deliver to the director of the *division* [department]:

- (1) a copy of the judgment entered pursuant to Article 42.01 of this code, completed on a standardized felony judgment form described by Section 4 of that article [Article];
- (2) a copy of any order revoking probation and imposing sentence pursuant to Section 23, [8 of] Article 42.12, of this code, including:
 - (A) any amounts owed for restitution, fines, and court costs, completed on a standardized felony judgment form described by Section 4, [of] Article 42.01, of this code; and
 - (B) a copy of the client supervision plan prepared for the defendant by the *community supervision and corrections* [adult probation] department supervising the defendant, if such a plan was prepared;

(3) a written report that states the nature and the seriousness of each offense and that states the citation to the provision or provisions of the Penal Code or other law under which the defendant was convicted;

(4) a copy of the victim impact statement, if one has been prepared in the case under Article 56.03 of this code;

(5) a statement as to whether there was a change in venue in the case and, if so, the names of the county prosecuting the offense and the county in which the case was tried;

(6) a copy of the record of arrest for each offense;

(7) if requested, information regarding the criminal history of the defendant, including the defendant's state identification number if the number has been issued;

(8) a copy of the indictment or information for each offense;

(9) a checklist sent by the department to the county and completed by the county in a manner indicating that the documents required by this subsection and Subsection (c) of this section accompany the defendant; and

(10) ~~a copy of the Criminal Justice Data Report prepared under Section 413.018, Government Code; and~~

~~[(11)]~~ a copy of a presentence or postsentence investigation report prepared under Section 9, Article 42.12 of this code.

(b) The *institutional division of the Texas Department of Criminal Justice* ~~[Corrections]~~ shall not take a defendant into custody under this article ~~[Article]~~ until the director receives the documents required by Subsections (a) and (c) of this section. *The director shall certify under the seal of the institutional division the documents received under Subsections (a) and (c) of this section. A document certified under this subsection is self-authenticated for the purposes of Rules 901 and 902, Texas Rules of Criminal Evidence.*

(c) A county that transfers a defendant to the *institutional division of the Texas Department of Criminal Justice* ~~[Corrections]~~ under this article ~~[Article]~~ shall also deliver to the director of the *division* ~~[department]~~ any presentence or postsentence investigation report, ~~[probation]~~ revocation report, psychological or psychiatric evaluation of the defendant, and available social or psychological background information relating to the defendant and may deliver to the director any additional information upon which the judge or jury bases the punishment decision.

(d) The *institutional division of the Texas Department of Criminal Justice* ~~[Corrections]~~ shall make documents received under Subsections (a) and (c) of this section available to the *pardons and paroles division* ~~[Board of Pardons and Paroles]~~ on the request of the *pardons and paroles division* ~~[board or its representative]~~.

(e) A county is not required to deliver separate documents containing information relating to citations to provisions of the Penal Code or other law and to changes of venue, as otherwise required by Subsections (a)(3) and (a)(5) of this article ~~[Article]~~, if the standardized felony judgment form described by Section 4, ~~[of]~~ Article 42.01, of this code is modified to require that information.

(f) Except as provided by Subsection (g) of this section, the county sheriff is responsible for ensuring that documents and information required by this section accompany defendants sentenced by district courts in the county to terms of *imprisonment* ~~[confinement]~~ in the *institutional division of the Texas Department of Criminal Justice* ~~[Corrections]~~.

(g) If the presiding judge of the administrative judicial region in which the county is located determines that the county sheriff is unable to perform the duties required by Subsection (f) of this section, the presiding judge may impose those duties on:

(1) the district clerk; or

(2) the prosecutor of each district court in the county.

(h) If a *parole panel* ~~[the board]~~ releases on parole a person who is confined in a jail in this state, a federal correctional institution, or a correctional institution in another state, the *pardons and paroles division of the Texas Department of Criminal Justice* ~~[Board of Pardons and Paroles]~~ shall request the sheriff who would otherwise be required to transfer the person to the *institutional division* ~~[Texas Department of Corrections]~~ to forward to both

~~divisions [the board and to the department] the information described by Subsections (a) and (c) of this section. The sheriff shall comply with the request of the pardons and paroles division [board]. The pardons and paroles division [board] shall determine whether the information forwarded by the sheriff under this subsection contains a thumbprint taken [fingerprint] from the person in the manner provided by Article 38.33 of this code and, if not, the division [board] shall obtain a thumbprint taken in the manner provided by that article [10-finger print from the person, either by use of the ink-rolled print method or by use of a live scanning device that prints the fingerprint image on paper.] and shall forward the thumbprint [10-finger print] to the institutional division [department] for inclusion with the information sent by the sheriff.~~

(i) A county may deliver the documents required under Subsections (a) and (c) of this section to the institutional division of the Texas Department of Criminal Justice by electronic means. For purposes of this subsection, "electronic means" means the transmission of data between word processors, data processors, or similar automated information equipment over dedicated cables, commercial lines, or other similar methods of transmission.

Art. 42.20. IMMUNITIES. (a) An individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act:

(1) was performed pursuant to a court order or was otherwise performed in an official capacity; and

(2) was not performed with conscious indifference for the safety of others.

(b) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in Subsection (c) of this article or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a) of this article.

(c) This article applies to:

(1) a director or employee of a community supervision and corrections department or a community corrections facility;

(2) a sheriff or employee of a sheriff's department;

(3) a county judge, county commissioner, or county employee;

(4) an officer or employee of a state agency; or

(5) an officer or employee of a political subdivision other than a county.

SECTION 5.04. Chapter 43, Code of Criminal Procedure, is amended by amending Articles 43.01, 43.03, 43.09, 43.10, 43.101, 43.11, and 43.12 and adding Article 43.131 to read as follows:

Art. 43.01. DISCHARGING JUDGMENT FOR FINE. (a) When the sentence against an individual defendant is for fine and costs, he shall be discharged from the same:

(1) when the amount thereof has been fully paid; [or]

(2) when remitted by the proper authority; [or]

(3) when he has remained in custody for the time required by law to satisfy the amount thereof; or

(4) when the defendant has discharged the amount of fines and costs in any other manner permitted by this code.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

(1) when the amount thereof has been fully paid; [or]

(2) when the execution against the corporation or association has been fully satisfied; or

(3) when the judgment has been fully satisfied in any other manner.

Art. 43.03. PAYMENT OF FINE. (a) If a defendant is sentenced to pay a fine or costs or both and he defaults in payment, the court *after a hearing under Subsection (d) of this article* may order him *confined* ~~[imprisoned]~~ in jail until discharged as provided by law or may order him to discharge the fines and costs in any other manner provided by Article 43.09 of this code. A certified copy of the judgment, sentence, and order is sufficient to authorize *confinement under this subsection* ~~[such imprisonment]~~.

(b) A term of *confinement* ~~[imprisonment]~~ for default in payment of fine or costs or both may not exceed the maximum term of *confinement* ~~[imprisonment]~~ authorized for the offense for which the defendant was sentenced to pay the fine or costs or both. *If a court orders a term of confinement for default in payment of fines or costs under this article at a time during which a defendant is serving another term of confinement for default or is serving a term of confinement for conviction of an offense, the term of confinement for default runs concurrently with the other term of confinement, unless the court orders the terms to run consecutively under Article 42.08 of this code.*

(c) If a defendant is sentenced both to *confinement* ~~[imprisonment]~~ and to pay a fine or costs or both, and he defaults in payment of either, a term of *confinement* ~~[imprisonment]~~ for the default, when combined with the term of *confinement* ~~[imprisonment]~~ already assessed, may not exceed the maximum term of *confinement* ~~[imprisonment]~~ authorized for the offense for which the defendant was sentenced.

(d) *A court may not order a defendant confined under Subsection (a) of this article unless the court at a hearing:*

(1) *determines that the defendant is not indigent or determines that the defendant wilfully refused to pay or failed to make sufficient bona fide efforts legally to acquire the resources to pay and enters that determination in writing in the court docket; and*

(2) *determines that no alternative method of discharging fines and costs provided by Article 43.09 of this code is appropriate for the defendant.*

Art. 43.09. FINE DISCHARGED. (a) When a defendant is convicted of a misdemeanor and his punishment is assessed at a pecuniary fine, if he is unable to pay the fine and costs adjudged against him, he may for such time as will satisfy the judgment be put to work in the workhouse, or on the county farm, or public improvements of the county or a political subdivision located in whole or in part in the county, as provided in the succeeding *article* ~~[Article]~~; or if there be no such workhouse, farm or improvements, he shall be *confined* ~~[imprisoned]~~ in jail for a sufficient length of time to discharge the full amount of fine and costs adjudged against him; rating such *confinement* ~~[imprisonment]~~ at \$50 for each day and rating such labor at \$50 for each day; provided, however, that the defendant may pay the pecuniary fine assessed against him at any time while he is serving at work in the workhouse, or on the county farm, or on the public improvements of the county or a political subdivision located in whole or in part in the county, or while he is serving his jail sentence, and in such instances he shall be entitled to the credit he has earned under this subsection during the time that he has served and he shall only be required to pay his balance of the pecuniary fine assessed against him. A defendant who performs labor under this article during a day in which he is *confined* ~~[imprisoned]~~ is entitled to both the credit for *confinement* ~~[imprisonment]~~ and the credit for labor provided by this article.

(b) In its discretion, the court may order that for each day's confinement served by a defendant under this *article* ~~[Article]~~, the defendant receive credit toward payment of the pecuniary fine and credit toward payment of costs adjudged against the defendant. Additionally, the court may order that the defendant receive credit under this *article* ~~[Article]~~ for each day's confinement served by the defendant as punishment for the offense.

(c) In its discretion, the court may order that a defendant serving concurrent, but not consecutive, sentences for two or more misdemeanors may, for each day served, receive credit toward the satisfaction of costs and fines imposed for each separate offense.

(d) Notwithstanding any other provision of this article, in its discretion, the court or the sheriff of the county may grant an additional two days credit for each day served to any inmate participating in an approved work program under this article or a rehabilitation, restitution, or education program.

(e) A court in a county served by a community supervision and corrections department that has an electronic monitoring program approved by the community justice assistance division of the Texas Department of Criminal Justice may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by submitting to electronic monitoring. A defendant that submits to electronic monitoring under this subsection discharges fines and costs in the same manner as if the defendant were confined in county jail.

(f) A court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.

(g) In its order requiring a defendant to participate in community service work under Subsection (f) of this article, the court must specify:

(1) the number of hours the defendant is required to work; and

(2) ~~[the entity or organization for which the defendant is required to work;~~

~~[(3) the project on which the defendant is required to work; and~~

~~[(4) whether the community supervision and corrections [district probation] department or a court-related services office will perform the administrative duties required by the placement of the defendant in the community service program.~~

(h) The court may order the defendant to perform community service work under Subsection (f) of this article only for a governmental entity or a nonprofit organization that provides services to the general public that enhance social welfare and the general well-being of the community. A governmental entity or nonprofit organization that accepts a defendant under Subsection (f) of this article to perform community service must agree to supervise the defendant in the performance of the defendant's work and report on the defendant's work to the district probation department or court-related services office.

(i) The court may require bail of a defendant to ensure the defendant's faithful performance of community service under Subsection (f) of this article and may attach conditions to the bail as it determines are proper.

(j) A court may not order a defendant to perform more than 16 hours per week of community service under Subsection (f) of this article unless the court determines that requiring the defendant to work additional hours does not work a hardship on the defendant or the defendant's dependents.

(k) A defendant is considered to have discharged \$50 of fines or costs for each eight hours of community service performed under Subsection (f) of this article.

~~[(l) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, an employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 43.10. ~~[TO DO]~~ MANUAL LABOR. ~~[(a)]~~ Where the punishment assessed in a conviction for misdemeanor is confinement in jail for more than one day, or where in such conviction the punishment is assessed only at a pecuniary fine and the party so convicted is unable to pay the fine and costs adjudged against him, or where the party convicted is required to serve a period of confinement as a condition of *community supervision* [probation], the party convicted or required to serve the period of confinement shall be required to do manual labor in accordance with the provisions of this *article* [Article] under the following rules and regulations:

1. Each commissioners court may provide for the erection of a workhouse and the establishment of a county farm in connection therewith for the purpose of utilizing the labor of said parties so convicted or required to serve a period of confinement;

2. Such farms and workhouses shall be under the control and management of the sheriff, and the sheriff may adopt such rules and regulations not inconsistent with the rules

and regulations of the Texas Commission on Jail Standards and with the laws as the sheriff deems necessary;

3. Such overseers and guards may be employed by the sheriff under the authority of the commissioners court as may be necessary to prevent escapes and to enforce such labor, and they shall be paid out of the county treasury such compensation as the commissioners court may prescribe;

4. They shall be put to labor upon public works, including public works for a political subdivision located in whole or in part in the county;

5. One who from age, disease, or other physical or mental disability is unable to do manual labor shall not be required to work. His inability to do manual labor may be determined by a physician appointed for that purpose by the county judge or the commissioners court, who shall be paid for such service such compensation as said court may allow; and

6. For each day of manual labor, in addition to any other credits allowed by law, a *defendant* [prisoner] is entitled to have one day deducted from each sentence or period of confinement he is serving. The deduction authorized by this article, when combined with the deduction required by Article 42.10, Code of Criminal Procedure, may not exceed two-thirds (%) of the sentence or period of confinement.

~~[(b) A sheriff, employee of a sheriff's department, county commissioner, county employee, county judge, and employee of a community corrections and supervision department, restitution center, or officer or employee of a political subdivision other than a county is not liable for damages arising from an act or failure to act in connection with manual labor performed by an inmate pursuant to this article if the act or failure to act:~~

~~[(1) was performed pursuant to court order; and~~

~~[(2) was not intentional, wilfully or wantonly negligent, or performed with conscious indifference or reckless disregard for the safety of others.]~~

Art. 43.101. VOLUNTARY WORK [BY PRETRIAL DETAINEES]. (a) A defendant confined in county jail awaiting trial *or a defendant confined in county jail after conviction of a felony and awaiting transfer to the institutional division of the Texas Department of Criminal Justice* may volunteer to participate in any work program operated by the sheriff that uses the labor of convicted defendants.

(b) The sheriff may accept a defendant as a volunteer under Subsection (a) of this section if the defendant is not awaiting trial for an offense involving violence *or is not awaiting transfer to the institutional division of the Texas Department of Criminal Justice after conviction of a felony involving violence*, and if the sheriff determines that the inmate has not engaged previously in violent conduct and does not pose a security risk to the general public if allowed to participate in the work program.

(c) *A defendant participating in a work program under this section is not a state employee for the purposes of Article 8309g or 8309h, Revised Statutes.* ~~[The limitations on liability of a county for damages suffered by an inmate participating in a work program operated by the sheriff apply to a defendant who volunteers under Subsection (a) of this article in the same manner as if the inmate were participating in the program after conviction of an offense.]~~

Art. 43.11. AUTHORITY FOR CONFINEMENT [IMPRISONMENT]. When, by the judgment and sentence of the court, a defendant is to be *confined* [imprisoned] in jail, a certified copy of such judgment and sentence shall be sufficient authority for the sheriff to place such defendant in jail.

Art. 43.12. CAPIAS FOR CONFINEMENT [IMPRISONMENT]. A capias issued for the arrest and commitment of one convicted of a misdemeanor, the penalty of which or any part thereof is *a fine* [imprisonment in jail], shall recite the judgment and sentence and command the sheriff to *immediately bring [place]* the defendant *before the court* [in jail, to remain the length of time therein fixed]; and this writ shall be sufficient to authorize the sheriff to place *the* [such] defendant in jail *until the defendant appears before the court.*

Art. 43.131. IMMUNITIES. (a) *An individual listed in Subsection (c) of this article and the governmental entity that the individual serves as an officer or employee are not*

liable for damages arising from an act or failure to act by the individual or governmental entity in connection with a community service program or work program established under this chapter if the act or failure to act:

(1) was performed pursuant to a court order or was otherwise performed in an official capacity; and

(2) was not performed with conscious indifference for the safety of others.

(b) Chapter 101, Civil Practice and Remedies Code, does not apply to a claim based on an act or a failure to act of an individual listed in Subsection (c) of this article or a governmental entity the officer serves as an officer or employee if the act or failure to act is in connection with a program described by Subsection (a) of this article.

(c) This article applies to:

(1) a director or employee of a community supervision and corrections department or a community corrections facility;

(2) a sheriff or employee of a sheriff's department;

(3) a county judge, county commissioner, or county employee;

(4) an officer or employee of a state agency; or

(5) an officer or employee of a political subdivision other than a county.

SECTION 5.05. Section 3(a), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(a) Regardless of the plea and whether the punishment be assessed by the judge or the jury, evidence may~~[-as permitted by the Rules of Evidence,]~~ be offered by the state and the defendant as to any matter the court deems relevant to sentencing, including but not limited to the prior criminal record of the defendant, his general reputation, ~~[and] his character, an opinion regarding his character, the circumstances of the offense for which he is being tried, and, notwithstanding Rules 404 and 405, Texas Rules of Criminal Evidence, any other evidence of an extraneous crime or bad act that is shown beyond a reasonable doubt by evidence to have been committed by the defendant or for which he could be held criminally responsible, regardless of whether he has previously been charged with or finally convicted of the crime or act. [The term prior criminal record means a final conviction in a court of record, or a probated or suspended sentence that has occurred prior to trial, or any final conviction material to the offense charged.]~~ A court may consider as a factor in mitigating punishment the conduct of a defendant while participating in a program under Chapter 17 ~~[Article 17.40 or 17.42(a)]~~ of this code as a condition of release on bail. Additionally, notwithstanding Rule 609(d), Texas Rules of Criminal Evidence, evidence may be offered by the state and the defendant of an adjudication of delinquency based on a violation by the defendant of a penal law of the grade of felony unless:

(1) the adjudication is based on conduct committed more than five years before the commission of the offense for which the person is being tried; and

(2) in the five years preceding the date of the commission of the offense for which the person is being tried, the person did not engage in conduct for which the person has been adjudicated as a delinquent child or a child in need of supervision and did not commit an offense for which the person has been convicted.

SECTION 5.06. Section 3, Article 37.07, Code of Criminal Procedure, is amended by adding Subsection (g) to read as follows:

(g) On timely request of the defendant, notice of intent to introduce evidence under this article shall be given in the same manner required by Rule 404(b), Texas Rules of Criminal Evidence. If the attorney representing the state intends to introduce an extraneous crime or bad act that has not resulted in a final conviction in a court of record or a probated or suspended sentence, notice of that intent is reasonable only if the notice includes the date on which and the county in which the alleged crime or bad act occurred and the name of the alleged victim of the crime or bad act. The requirement under this subsection that the attorney representing the state give notice applies only if the defendant makes a timely request to the attorney representing the state for the notice.

SECTION 5.07. Article 45.54, Code of Criminal Procedure, is amended to read as follows:

Art. 45.54. SUSPENSION OF SENTENCE AND DEFERRAL OF FINAL DISPOSITION. (1) On a plea of guilty or nolo contendere by a defendant or on a finding of guilt in a misdemeanor case punishable by fine only and payment of all court costs, the justice may defer further proceedings without entering an adjudication of guilt and place the defendant on probation for a period not to exceed 180 days. This article does not apply to a misdemeanor case disposed of by Section 143A, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), or a serious traffic violation as defined in Section 3(26), Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes).

(2) During the deferral period, the justice shall require the defendant to successfully complete a Central Education Agency-approved driving safety course, if the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes), and the defendant:

(A) *has completed an approved driving safety course within the preceding 12 months;*
or

(B) *is a first-time offender who elects deferred adjudication.*

(3) During said deferral period, the justice may require the defendant to:

(a) post a bond in the amount of the fine assessed to secure payment of the fine;
(b) pay restitution to the victim of the offense in an amount not to exceed the fine assessed;

(c) submit to professional counseling; [and]

(d) comply with any other reasonable condition; and

(e) *require the defendant to successfully complete a Central Education Agency approved driving safety course, if:*

(1) *the offense alleged is an offense involving the operation of a motor vehicle, other than a commercial motor vehicle, as defined in Subdivision (6), Section 3, Texas Commercial Driver's License Act (Article 6687b-2, Revised Statutes); and*

(2) *the defendant has not completed an approved driving safety course within the preceding 12 months.*

(4) At the conclusion of the deferral period, if the defendant presents satisfactory evidence that he has complied with the requirements imposed, the justice shall dismiss the complaint, and it shall be clearly noted in the docket that the complaint is dismissed and that there is not a final conviction. Otherwise, the justice may proceed with an adjudication of guilt. After an adjudication of guilt, the justice may reduce the fine assessed or may then impose the fine assessed, less any portion of the assessed fine that has been paid. If the complaint is dismissed, a special expense not to exceed the amount of the fine assessed may be imposed.

(5) If at the conclusion of the deferral period the defendant does not present satisfactory evidence that the defendant complied with the requirements imposed, the justice may impose the fine assessed or impose a lesser fine. The imposition of the fine or lesser fine constitutes a final conviction of the defendant.

(6) Records relating to a complaint dismissed as provided by this article may be expunged under Article 55.01 of this code. If a complaint is dismissed under this article, there is not a final conviction and the complaint may not be used against the person for any purpose.

SECTION 5.08. From the effective date of this article to September 1, 1994, a reference in an article of the Code of Criminal Procedure, as amended by this article, to an offense under Chapter 49, Penal Code, shall be construed as a reference to the offense and the punishment provision for the offense as they existed before the effective date of Article 1 of this Act.

SECTION 5.09. (a) The change in law made by this article applies only to an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose.

SECTION 5.10. This article takes effect on September 1, 1993.

ARTICLE 6

SECTION 6.01. Subsection (b), Section 8, Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(b)(1) A prisoner under sentence of death is not eligible for parole.

(2) If a prisoner is serving a life sentence for a capital felony, the prisoner is not eligible for release on parole until the actual calendar time the prisoner has served, without consideration of good conduct time, equals 40 [35] calendar years.

(3) If a prisoner is serving a sentence for the offenses listed in Subdivision (1)(A)[(B)], (C), [or] (D), (E), or (F) of Section 3g(a), Article 42.12 of this code, or if the judgment contains an affirmative finding under Subdivision (2) of Subsection (a) of Section 3g of that article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals *one-half* [one-fourth] of the maximum sentence or 30 [15] calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years.

(4) Except as provided by Subsection (m) of this section, all other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-fourth of the maximum sentence imposed or 15 years, whichever is less.

SECTION 6.02. Section 8(c), Article 42.18, Code of Criminal Procedure, is amended to read as follows:

(c) Except as otherwise provided by this subsection, a prisoner who is not on parole shall be released to mandatory supervision by order of a parole panel when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the state and shall be amenable to conditions of supervision ordered by the parole panel. A prisoner may not be released to mandatory supervision if the prisoner is serving a sentence for an offense and the judgment for the offense contains an affirmative finding under Subdivision (2), Subsection (a), Section 3g, Article 42.12, of this code or if the prisoner is serving a sentence for:

- (1) a first degree felony under Section 19.02, Penal Code (Murder);
- (2) a capital felony under Section 19.03, Penal Code (Capital Murder);
- (3) a first degree felony or a second degree felony under Section 20.04, Penal Code (Aggravated Kidnapping);
- (4) a second degree felony under Section 22.011, Penal Code (Sexual Assault);
- (5) a second degree or *first* [third] degree felony under Section 22.02, Penal Code (Aggravated Assault);
- (6) a first degree felony under Section 22.021, Penal Code (Aggravated Sexual Assault);
- (7) ~~a first degree felony under Section 22.03, Penal Code (Deadly Assault on Law Enforcement or Corrections Officer or Court Participant);~~
- [(8)] a first degree felony under Section 22.04, Penal Code (Injury to a Child or an Elderly Individual);
- (8) [(9)] a first degree felony under Section 28.02, Penal Code (Arson);
- (9) [(10)] a second degree felony under Section 29.02, Penal Code (Robbery);

(10) [(11)] a first degree felony under Section 29.03, Penal Code (Aggravated Robbery);
or

(11) [(12)] a first degree felony under Section 30.02, Penal Code (Burglary), if the offense is punished under Subsection (d)(2) or (d)(3) of that section.

SECTION 6.03. Section 7, Article 42.18, Code of Criminal Procedure, is amended by amending Subsection (e) and adding Subsection (g) to read as follows:

(e) *Except as provided by Subsection (g) of this section, in [1a] matters of parole, release to mandatory supervision, and revocation of parole or mandatory supervision, the board members shall act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the chairman of the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by majority vote.*

(g) *The board may grant parole to a person convicted of a capital felony only on a two-thirds vote of the entire membership of the board.*

SECTION 6.04. (a) The change in law made by this article to Article 42.18, Code of Criminal Procedure, applies only to a defendant sentenced for an offense committed on or after the effective date of this article. A defendant sentenced for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

(b) For the purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before that date.

SECTION 6.05. This article takes effect September 1, 1993.

ARTICLE 7

SECTION 7.01. (a) Chapter 48, Code of Criminal Procedure, is amended by adding Article 48.05 to read as follows:

Art. 48.05. RESTORATION OF CIVIL RIGHTS. (a) An individual convicted of a federal offense other than an offense involving violence or the threat of violence or involving drugs or firearms may, except as provided by Subsection (b) of this article, submit an application for restoration of any civil rights forfeited under the laws of this state as a result of the conviction.

(b) An individual may not apply for restoration of civil rights under this article unless:

- (1) the individual has completed the sentence for the federal offense;*
- (2) the conviction occurred three or more years before the date of application; and*
- (3) the individual has not been convicted at any other time of an offense under the laws of this state, another state, or the United States.*

(c) An application for restoration of civil rights must contain:

- (1) a completed application on a form adopted by the Board of Pardons and Paroles;*
- (2) three or more affidavits attesting to the good character of the applicant; and*
- (3) proof that the applicant has completed the sentence for the federal offense.*

(d) The applicant must submit the application to:

- (1) the sheriff of the county in which the applicant resides at the time of application or resided at the time of conviction of the federal offense, if the individual resided in this state at that time; or*

- (2) the Board of Pardons and Paroles.*

(e) If an application is submitted to a sheriff, the sheriff shall review the application and recommend to the Board of Pardons and Paroles whether the individual's civil rights should be restored. If the sheriff recommends restoration of the individual's civil rights, the board may either:

- (1) concur in the recommendation and forward the recommendation to the governor; or*
- (2) independently review the application to determine whether to recommend to the governor the restoration of the individual's civil rights.*

(f) If the sheriff does not recommend the restoration of the individual's civil rights, the individual may apply directly to the Board of Pardons and Paroles.

(g) If an application is submitted to the Board of Pardons and Paroles without first being submitted to a sheriff, the board shall review the application and recommend to the governor as to whether the individual's civil rights should be restored.

(h) The Board of Pardons and Paroles may require or obtain additional information as necessary to perform a review under Subsection (e)(2) or Subsection (g) of this article.

(i) On receipt from the Board of Pardons and Paroles of a recommendation to restore the civil rights of an individual, the governor may either grant or deny the restoration of civil rights to the individual. If the governor grants the restoration of civil rights to the individual, the governor shall issue a certificate of restoration of civil rights.

(j) If an application under this article is denied by the Board of Pardons and Paroles or the governor, the individual may not file another application under this article before the first anniversary of the date of the denial.

(k) A restoration of civil rights under this article is a form of pardon that restores all civil rights under the laws of this state that an individual forfeits as a result of the individual's conviction of a federal offense, except as specifically provided in the certificate of restoration.

(b) Article 48.05, Code of Criminal Procedure, as added by this article, applies to an individual convicted of a federal offense committed before, on, or after the effective date of this Act.

SECTION 7.02. (a) Article 55.01, Code of Criminal Procedure, is amended to read as follows:

Art. 55.01. RIGHT TO EXPUNCTION. (a). A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) *the person is tried for the offense for which the person was arrested and is:*

(A) acquitted by the trial court; or

(B) convicted and subsequently pardoned; or

(2) *each of the following conditions exist:*

(A) [(1)] an indictment or information charging him with commission of a felony has not been presented against him for an offense arising out of the transaction for which he was arrested or, if an indictment or information charging him with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) [(2)] he has been released and the charge, if any, has not resulted in a final conviction and[,] is no longer pending and there was no court ordered probation under Article 42.12, Code of Criminal Procedure, nor a conditional discharge under Section 481.109, Health and Safety Code; and

(C) [(3)] he has not been convicted of a felony in the five years preceding the date of the arrest.

(b) A district court may expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 of this code if the person is:

(1) tried for the offense for which the person was arrested;

(2) convicted of the offense; and

(3) acquitted by the court of criminal appeals.

(b) The change in law to Article 55.01, Code of Criminal Procedure, made by this article permitting expunctions for persons acquitted of or pardoned for offenses applies to a defendant acquitted of or pardoned for an offense regardless of whether the offense was committed before, on, or after the effective date of this article.

SECTION 7.03. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.36 to read as follows:

Art. 38.36. EVIDENCE IN PROSECUTIONS FOR MURDER. (a) In all prosecutions for murder, the state or the defendant shall be permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

(b) In a prosecution for murder, if a defendant raises as a defense a justification provided by Section 9.31, 9.32, or 9.33, Penal Code, the defendant, in order to establish the defendant's reasonable belief that use of force or deadly force was immediately necessary, shall be permitted to offer:

(1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Section 71.01, Family Code; and

(2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense, including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion.

SECTION 7.04. Section 14, Chapter 652, Acts of the 72nd Legislature, Regular Session, 1991, is repealed.

SECTION 7.05. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 1993.

(b) Section 7.03 of this article takes effect September 1, 1994.

ARTICLE 8

SECTION 8.01. Article 5.05, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A peace officer who investigates a family violence incident or who responds to a disturbance call that may involve ~~[has reason to believe that an offense involving]~~ family violence ~~[has occurred]~~ shall make a written report, including but not limited to:

- (1) the names of the suspect and complainant;*
- (2) the date, time, and location of the incident;*
- (3) any visible or reported injuries; and*
- (4) a description of the incident and a statement of its disposition.*

(e) A peace officer who makes a report under Subsection (a) of this article shall provide information concerning the incident or disturbance to the bureau of identification and records of the Department of Public Safety for its recordkeeping function under Section 411.042, Government Code. The bureau shall prescribe the form and nature of the information required to be reported to the bureau by this article.

SECTION 8.02. This article takes effect September 1, 1993.

ARTICLE 9

SECTION 9.01. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.013 to read as follows:

Art. 42.013. FINDING OF FAMILY VIOLENCE. In the trial of an offense under Title 5, Penal Code, if the court determines that the offense involved family violence, as defined by Section 71.01, Family Code, the court shall make an affirmative finding of that fact and enter the affirmative finding in the judgment of the case.

SECTION 9.02. Article 42.01, Code of Criminal Procedure, is amended by adding Section 5 to read as follows:

Sec. 5. In addition to the information described by Section 1 of this article, the judgment should reflect affirmative findings entered pursuant to Article 42.013 of this code.

SECTION 9.03. This article takes effect September 1, 1993.

ARTICLE 10

SECTION 10.01. Article 24.03, Code of Criminal Procedure, is amended to read as follows:

Art. 24.03. SUBPOENA AND APPLICATION THEREFOR. (a) Before the clerk or his deputy shall be required or permitted to issue a subpoena in any felony case pending in any district or criminal district court of this State of which he is clerk or deputy, the defendant or his attorney or the State's attorney shall make written, sworn application to such clerk for each witness desired. Such application shall state the name of each witness desired, the location and vocation, if known, and that the testimony of said witness is material to the State or to the defense. The application must be filed with the clerk and placed with the papers in the cause and made available to both the State and the defendant. *Except as provided by Subsection (b) of this article, as [As] far as is practical* such clerk shall include in one subpoena the names of all witnesses for the State and for defendant, and such process shall show that the witnesses are summoned for the State or for the defendant. When a witness has been served with a subpoena, attached or placed under bail at the instance of either party in a particular case, such execution of process shall inure to the benefit of the opposite party in such case in the event such opposite party desires to use such witness on the trial of the case, provided that when a witness has once been served with a subpoena, no further subpoena shall be issued for said witness.

(b) *If the defendant is a member of a combination as defined by Section 71.01, Penal Code, the clerk shall issue for each witness a subpoena that does not include a list of the names of all other witnesses for the State or the defendant.*

SECTION 10.02. This article takes effect September 1, 1993.

ARTICLE 11

SECTION 11.01. Chapter 40, Code of Criminal Procedure, is amended by adding Article 40.001 to read as follows:

Art. 40.001. *NEW TRIAL ON MATERIAL EVIDENCE. A new trial shall be granted an accused where material evidence favorable to the accused has been discovered since trial.*

SECTION 11.02. Under the terms of Section 22.108(b), Government Code, Rule 30(b)(6), Texas Rules of Appellate Procedure, is disapproved.

SECTION 11.03. The rulemaking authority granted to the court of criminal appeals under Section 22.108, Government Code, is withdrawn with respect to rules of appellate procedure relating to granting a new trial on the grounds of evidence other than material evidence discovered after the trial of an offense.

SECTION 11.04. (a) The change in law made by this article applies only to a new trial for an offense committed on or after the effective date of this article. For purposes of this section, an offense is committed before the effective date of this article if any element of the offense occurs before the effective date.

(b) A new trial for an offense committed before the effective date of this article is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 11.05. This article takes effect September 1, 1993.

ARTICLE 12

SECTION 12.01. Article 38.07, Code of Criminal Procedure, is amended to read as follows:

Art. 38.07. TESTIMONY IN CORROBORATION OF VICTIM OF SEXUAL OFFENSE. A conviction under Chapter 21, Section 22.011, or Section 22.021, Penal Code, is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within *one year* [six months] after the date on which the offense is alleged to have occurred. The requirement that the victim inform another person of an alleged offense does not apply if the victim was younger than 18 [14] years of age at the time of the alleged offense. ~~[The court shall instruct~~

~~the jury that the time which lapsed between the alleged offense and the time it was reported shall be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.]~~

SECTION 12.02. This article takes effect September 1, 1993.

ARTICLE 13

SECTION 13.01. Notwithstanding any provision of this Act establishing an effective date for an article of this Act, this Act takes effect only if Senate Bill No. 532, Acts of the 73rd Legislature, Regular Session, 1993, takes effect. If Senate Bill No. 532 does not take effect, this Act has no effect.

SECTION 13.02. (a) Except as provided by Subsection (c) of this section, an amendment to any provision of the Penal Code made by another Act of the 73rd Legislature, Regular Session, 1993, an amendment in another Act to a provision of Article 67011-1, Revised Statutes, or an amendment in another Act to a provision of the Health and Safety Code also amended by this Act, applies only to an offense committed under the provision on or after the effective date of the other Act and before September 1, 1994. The amendment made by the other Act continues in effect only for the limited purpose of the prosecution of an offense committed before September 1, 1994.

(b) For purposes of this section, an offense is committed before September 1, 1994, if all elements of the offense occur before that date.

(c) If House Bill No. 354, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, the amendments made to the Penal Code by that Act continue in effect on and after September 1, 1994. If Senate Bill No. 456, 73rd Legislature, Regular Session, 1993, is enacted and becomes law, the amendments made to the Penal Code by that Act continue in effect on and after September 1, 1994.

SECTION 13.03. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 22, 1993, by a viva-voce vote; May 11, 1993, Senate refused to concur in House amendmen's and requested appointment of Conference Committee; May 19, 1993, House granted request of the Senate; May 27, 1993, Senate adopted Conference Committee Report by a viva-voce vote; passed the House, with amendments, on May 8, 1993, by a non-record vote; May 19, 1993, House granted request of the Senate for appointment of Conference Committee; May 29, 1993, House adopted Conference Committee Report by a non-record vote.

Approved June 19, 1993.

Article 1 effective Sept. 1, 1994, except §§ 1.02, 1.06, 1.16 effective Sept. 1, 1993; articles 2 and 3 effective Sept. 1, 1994; article 4 effective Sept. 1, 1993; articles 5, 6, and 8 to 12 effective Sept. 1, 1993; article 7 effective Sept. 1, 1993, except § 7.03 effective Sept. 1, 1994; and article 13 effective Aug. 30, 1993, 90 days after date of adjournment.

CHAPTER 901

S.B. No. 1184

AN ACT

relating to partnership between community/junior colleges and upper-level universities or centers located in the same state uniform service region.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 51.661, Education Code, is amended to read as follows:

Sec. 51.661. PURPOSE. The purpose of this subchapter is to encourage partnerships between public community/junior colleges and upper-level universities or centers which are